



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

OCT 31 2019

EPA ORC
Office of Regional Hearing Clerk

October 31, 2019

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORC 04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the matter of Tim Galvez*, Docket No. TSCA-01-2020-0009

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Kathleen Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosures

cc: Tim Galvez

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

OCT 31 2019

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)
)
Tim Galvez dba Tim's Decks and Odd Jobs)
675 Forest Ave.)
Portland, ME 04103)
)
Respondent)
)
)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))
_____)

Docket No.
TSCA-01-2020-0009

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Director, Enforcement and Compliance Assurance Division (“ECAD”), U.S. Environmental Protection Agency (“EPA” or “Complainant”), Region 1.

2. Respondent, Tim Galvez (“Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated

thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair, and Painting Rule” or “RRP Rule”). Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239), commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule.” In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA (*Lead Hazard Information Pamphlet – Renovation of Target Housing*), 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E

(*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92), commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule.”

5. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA (*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*), 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L (collectively, the PRE Rule and the LBP Activities Rule are referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”).

6. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records.

7. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.83, the housing stock addressed by the Act and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, excepting housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any “0-bedroom dwelling” as defined at 40 C.F.R. § 745.103.

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

9. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14) and 40 C.F.R. § 745.83, the term “residential dwelling” means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

10. For purposes of complying with Section 406(b) of TSCA and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

11. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

12. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an “abatement,” as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building

components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g. cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

13. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

14. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by an EPA-authorized State or Tribal program.

15. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this Complaint, firms performing renovations in target housing are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation; and,

- iv. Retain all records necessary to demonstrate compliance with the same for three years.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(2), 745.89(d)(1)-(2), and 745.86(a) and (b).

16. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA.

17. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

18. Section 16(a) of TSCA, 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Under the Debt Collection Improvement Act and 40 C.F.R. Part 19, violations that occurred after January 12, 2009, are subject to penalties of up to \$37,500 per violation per day. *See* 78 Fed. Reg. 66643, 66647. Under the 2015 Civil Penalty Inflation Adjustment Act and 40 C.F.R. Part 19.4, the statutory maximum penalty for violations that occurred after November 2, 2015 and for which the penalty is assessed after February 6, 2019, is \$39,873.

II. GENERAL ALLEGATIONS

19. Respondent is an individual.

20. Respondent is the sole principal and owner of his residential repair, renovation, and painting business which he conducts in and around the Portland, Maine area, including Lewiston, Maine.

21. At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

22. Respondent’s office is located at 675 Forest Ave., Portland, Maine 04103.

23. At all times relevant to this Complaint, Respondent performed renovations of target housing, and was, thus, a “renovator” as defined at 40 C.F.R. § 746.83.

24. At all times relevant to this Complaint, Respondent was not certified as an individual renovator, nor was his firm certified under the RRP Rule.

25. At all times relevant to this Complaint, Milk Street Capital, L.L.C., the owner of a multi-family property located at 125 Pine St./81 Horton St., Lewiston, Maine (“Subject Property”), hired Respondent to paint the Subject Property.

26. At all times relevant to this Complaint, Respondent subcontracted painting of the Subject Property to his father, Ben Galvez dba Ben’s Painting (“Ben Galvez”).

27. At all times relevant to this Complaint, Ben Galvez was a “firm,” as defined in 40 C.F.R. § 745.83.

28. At all times relevant to this Complaint, Ben Galvez performed renovations of target housing for compensation, and was, thus, a “renovator” as defined at 40 C.F.R. § 746.83.

29. At all times relevant to this Complaint, Ben Galvez was not certified as a renovator under the RRP Rule, nor was his firm RRP Rule certified.

30. At all times relevant to the RRP Rule violations alleged in this Complaint, Ben Galvez performed painting and painting-related activities at the Subject Property that constituted a “renovation” within the meaning of 40 C.F.R. § 745.83.

31. The renovation activities performed by Ben Galvez at the Subject Property constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule.

32. On September 4, 2018, an EPA representative met with Respondent and Ben Galvez at the Maine Department of Environmental Protection Office in Portland, Maine, for the purpose of determining Respondent’s compliance with the RRP Rule (“Inspection”).

33. The Subject Property was constructed in 1891, and is, therefore, “target housing” as defined in 40 C.F.R. § 745.103.

34. In August of 2018, Ben Galvez performed a renovation, including painting and painting-related activities, at the Subject Property.

35. At all times relevant to this Complaint, the Subject Property was at least partially occupied.

36. At times relevant to this Complaint, EPA received a complaint that Ben Galvez was conducting renovation work in a non-lead safe manner. Specifically, the complainant described improper use of blue tarps in a manner that allowed paint chips to collect on the bare ground.

37. During the Inspection, Respondent told the EPA Inspector that he did not provide the *Renovate Right* pamphlet to the owner or the adult occupants of the Subject Property prior to the commencement of the exterior renovation.

III. VIOLATIONS

Count 1: Performing, Offering, or Claiming to Perform a Renovation without EPA Certification for Firm

38. Complainant incorporates by reference Paragraphs 1 through 37.

39. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply for EPA certification to perform renovations. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

40. At the time of the renovation at the Subject Property, Respondent was not a certified firm under the RRP Rule.

41. In performing an exterior renovation without certification from EPA under § 745.89 at the Subject Property, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

42. None of the exceptions identified in 40 C.F.R. § 745.82 applies to the renovation at the Subject Property.

43. The above-alleged violation is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

**Count 2: Failure to Ensure a Certified Renovator
Performs or Directs Work**

44. Complainant incorporates by reference Paragraphs 1 through 43.

45. Pursuant to 40 C.F.R. § 745.89(d)(1) and (2), firms performing renovations must ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90; and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

46. At no time before or during the renovation of the Subject Property was the Respondent or anyone on the work crew performing the renovation activities either a certified renovator or trained by a certified renovator, as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the renovation, as required under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

47. Respondent's failure to ensure that the individual performing renovation activities at the Subject Property was either a certified renovator or trained by a certified renovator and failure to ensure that a certified renovator was assigned to the Subject Property renovation constituted a violation of 40 C.F.R. §§ 745.89(d)(1) and (2) and Section 409 of TSCA.

48. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 3: Failure of Respondent to Provide EPA-approved Lead Hazard Information Pamphlet (“Renovate Right”)

49. Complainant incorporates by reference Paragraphs 1 through 48.

50. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than 60 days before beginning the renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the residential unit with the EPA-approved *Renovate Right* pamphlet and obtain written acknowledgement of receipt of the pamphlet. Additionally, pursuant to 40 C.F.R. § 745.84(a)(2)(i) and (ii), if the owner does not occupy the dwelling unit, the firm performing the renovation must provide an adult occupant of the unit with the pamphlet and obtain from the adult occupant a written acknowledgment that the occupant received the pamphlet or certify in writing that the pamphlet was delivered to the dwelling and that the firm performing the renovation had been unsuccessful in obtaining a written acknowledgement from the adult occupant, or obtain a certificate of mailing at least seven days prior to the renovation.

51. During the Inspection Respondent admitted that he failed to provide the *Renovate Right* pamphlet to the owner and adult occupants of the Subject Property.

52. Respondent’s failure to provide the *Renovate Right* pamphlet to the owner and adult occupants of the Subject Property is a violation of 40 C.F.R. § 745.84(a) and Section 409 of TSCA.

53. The violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 4: Failure of to Contain the Work Area

54. Complainant incorporates by reference Paragraphs 1 through 53.

55. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovation performed by the firm are performed in according with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), before beginning an exterior renovation, a firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

56. While renovating the exterior of the Subject Property, Respondent failed to ensure that the ground was covered with impermeable material sufficient to collect falling paint debris, in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), resulting in lead-based paint debris falling directly onto the ground around the perimeter of the Subject Property.

57. The failure of Respondent to ensure that the ground was covered at the Subject Property with impermeable material in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), constitutes a violation of 40 C.F.R. § 745.89(d)(3), 40 C.F.R. § 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

58. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. PROPOSED PENALTY

59. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to a Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

60. To assess a penalty for the alleged violations of the RRP in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to account EPA's August 2010 Interim Final Policy entitled, *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("RRP Penalty Policy") (revised April 2013). Complainant has also taken into account EPA's *Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* ("GPA Policy") (September 20, 2019). The RRP Penalty Policy and GPA Policy provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases. Copies of the RRP Penalty Policy and the GPA Policy are enclosed with this Complaint.

61. Complainant proposes that Respondent be assessed a civil penalty in the amount of **nine-hundred seventy-two dollars (\$972)** for the following TSCA violations alleged in this Complaint. The rationale for the penalty is set forth in Attachment 1 to the Complaint.

Count	Regulation Violated	Description	Penalty
1	40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii)	Performing, Offering, or Claiming to Perform a Renovation without EPA Certification for Firm	\$231
2	40 C.F.R. § 745.89(d)(1) and (2)	Failure to Ensure that a Certified Renovator Performs or Directs Work	\$231
3	40 C.F.R. § 745.84(a)	Failure to Provide owner/adult occupant Lead Hazard Information Pamphlet	\$202
4	40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C)	Failure of Respondent's Firm to Contain Work Area	\$308

V. QUICK RESOLUTION

62. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2020-0009) and should be forwarded to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

In the Matter of Tim Galvez dba Tim's Decks and Odd Jobs
TSCA-01-2020-0009

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 04-6
Boston, Massachusetts 02109-3912

and

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 04-2
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but need additional time, Respondent may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondent need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject Respondent to default. See 40 C.F.R. § 22.18(a).

63. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

64. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

65. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where a Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of a Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that a Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

66. Respondent shall send the original and one copy of the Answer, as well copies of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORC 04-6
Boston, Massachusetts 02109-3912

67. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Kathleen Woodward, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORC 04-2
Boston, Massachusetts 02109-3912

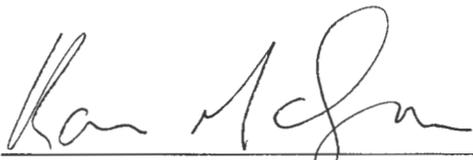
68. If Respondent fail to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by the Respondent, without further proceedings, thirty (30) days after the default order becomes final.

69. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the

Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

VII. SETTLEMENT CONFERENCE

70. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or her designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent’s counsel should contact Kathleen E. Woodward, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1780. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

10-30-19

Date

ATTACHMENT I

In the Matter of *Tim Galvez dba Tim's Express Decks and Odd Jobs* Docket Number TSCA-01-2020-0009

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Tim Galvez dba Tim's Express Decks and Odd Jobs ("Respondent") for violations that occurred during renovations at 125 Pine St. (a.k.a. 81 Horton St.), Lewiston, Maine ("Subject Property"). Respondent's business address is 675 Forest Ave., Portland, Maine, 04103. This administrative penalty action seeks to assess a civil penalty in the amount of \$972 for alleged violations of the Renovation, Repair, and Painting Rule ("RRP Rule"). The penalty was calculated according to EPA's August 2010 Interim Final Policy entitled, "*Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*" (the "LBP Consolidated ERP Policy"). The case team conducted an alternative penalty calculation using EPA's Graduated Penalty Approach Policy ("GPA Policy")¹. A breakdown of the penalty by count is set forth below.

RENOVATION, REPAIR, AND PAINTING RULE VIOLATIONS

COUNT 1. Performing, Offering, or Claiming to Perform Renovations without EPA Certification for Firm

Provision Violated: Forty C.F.R. § 745.81(a)(2)(ii), provides that no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

Circumstance Level: A firm's performance, offer, or claim to performance of renovations without EPA certification results in a *medium probability* of a renovation firm failing to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, under the LBP Consolidated ERP Policy Appendix A, a violation of 40 C.F.R. § 745.89(d) is a *Level 3a* violation.

Extent of Harm: The LBP Consolidated ERP Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due

¹ "Lead-Based Paint Graduated Penalty Approach Policy," issued on September 20, 2019 by Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance.

to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor.

Respondent performed exterior renovations without EPA Certification for his firm at the following location:

Respondent	Address	Approximate Start of Renovation	Children/Ages	Extent of Harm	Gravity -Based Penalty
Tim Galvez	125 Pine St., Lewiston, ME	August 20, 2018	None	Minor	\$4,667

COUNT 2. Failure to Ensure a Certified Renovator Performs or Directs Work

Provision Violated: Pursuant to 40 C.F.R. § 745.89(d)(1) and (2), firms performing renovations must ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90; and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90. At no time before or during the exterior renovation of the Subject Property was the individual performing the renovation activities either a certified renovator or trained by a certified renovator, as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the exterior renovation as required under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

Circumstance Level: A firm’s performance of renovations without EPA certification results in a *medium probability* of a renovation firm failing to comply with the work practice standards of 40 C.F.R § 745.85. As a result, under the LBP Consolidated ERP Policy; Appendix A, a violation of 40 C.F.R. § 745.89(d) is a *Level 3a* violation.

Extent of Harm: The LBP Consolidated ERP Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor.

Respondent failed to assign a certified renovator to the following renovation project:

Respondent	Address	Approximate Start date of Renovation	Children/Ages	Extent of Harm	Gravity -Based Penalty
Tim Galvez	125 Pine St., Lewiston, ME	08/20/2018	None	Minor	\$4,667

COUNT 3: Failure of Respondent to Provide EPA-approved Lead Hazard Information Pamphlet

Provisions Violated: 40 C.F.R. § 745.84(a)(1) requires firms performing renovations to, no more than 60 days before beginning renovation activities, provide the owner of the unit with a full and complete copy of an EPA-developed or EPA-approved lead-safe renovation pamphlet (“Pamphlet”), as defined at 40 C.F.R. § 745.83. The renovating firm must also either: (i) obtain from the owner a written acknowledgment that the owner has received the Pamphlet; or (ii) obtain a certificate of mailing at least seven days prior to the renovation. Pursuant to 40 C.F.R. § 745.84(a)(2), in addition to the above requirements, if the owner does not occupy the dwelling unit, the firm must provide an adult occupant of the unit with the Pamphlet. The firm must also either: (i) obtain from the adult occupant a written acknowledgment that the occupant has received the Pamphlet or certify in writing that a Pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant; or (ii) obtain a certificate of mailing at least seven days prior to the renovation.

Circumstance Level: The failure to provide the owner of the unit with the EPA-approved lead-safe renovation pamphlet results in a *high probability* of impacting the human health and the environment by impairing the owner’s ability to properly assess information regarding the risks associated with exposure to lead-based paint, lead dust, and debris. As a result, under the LBP Consolidated ERP Policy Appendix A, a violation of 40 C.F.R § 745.84(a)(1) is a *Level 1b* violation.

Extent of Harm: The Disclosure Rule ERP Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to provide a lead-safe renovation pamphlet to the occupants of the following target housing units before conducting renovations at those units:

Respondent	Address	Approx. Start Date	Children/Ages	Extent of Harm	Gravity-Based Penalty
Tim Galvez	125 Pine St., Lewiston, ME	08/20/2018	None	Minor	\$4,080

COUNT 4. - Failure of Respondent's Firm to Contain Work Area

Provision Violated: Failure to properly contain exterior work area by properly covering the ground with plastic to collect falling paint debris and by closing all windows; 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(A) and (C).

Circumstance Level: The failure to ensure that renovations properly contain the exterior work area by properly covering the ground with plastic to collect falling paint debris and closing all windows in compliance with the RRP results in a *high probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under the LBP Consolidated ERP Policy Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(A) and (C) and is a *Level 2a* violation.

Extent of Harm: The LBP Consolidated ERP Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to ensure that the work area at the following renovation project was properly contained:

Respondent	Address	Approximate Start Date of Renovation	Children/Ages	Extent of Harm	Gravity-Based Penalty
Tim Galvez	125 Pine St., Lewiston, ME	08/20/2018	None	Minor	\$6,223

Application of the GPA Policy

The Respondent attested to having a Gross Annual Revenue (“GAR”) of below \$100,000. For purposes of the penalty calculation, the case team assumed a GAR of \$99,000. Therefore, the GPA Policy penalty is calculated by dividing the GAR by 2,000,000, which equals the multiplier of 0.0495. The penalty is calculated under the GPA Policy by taking the ERP Policy penalty amount (\$19,637) and multiplying it by 0.0495, equaling the total penalty amount by using the GPA Policy of \$972, as shown below.

Total Penalty under the LPB Consolidated ERP Policy:	\$19,637
Gross Annual Revenue:	\$99,000
Equation Multiplier: $\\$99,000 \div \\$2,000,000 =$.0495
Graduated Penalty Calculation: $\\$19,637 \times .0495 =$	\$972
Total Penalty:	<u>\$972</u>

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)

Tim Galvez dba Tim's Decks and Odd Jobs)
675 Forest Ave.)
Portland, ME 04103)

Respondent)

Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))
_____)

**Docket No.
TSCA-01-2020-0009**

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

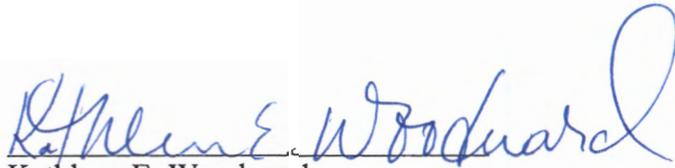
Original and One Copy
(Hand-Delivered):

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, MA 02109-3912

Copy, including 40 C.F.R.
Part 22, Penalty Policy for Renovation
Repair and Painting Rule, and Disclosure
Rule Penalty Enforcement Response
and Penalty Policy (Certified Mail,
Return Receipt Requested):

Tim Galvez
675 Forest Ave.
Portland, Maine 04103

Dated: October 31, 2019



Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORC 04-2)
Boston, Massachusetts 02109-3912