



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

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September 27, 2013

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

BY HAND

Re: *In re Bill Vizzo Contractors, LLC*
Docket No. TSCA-01-2013-0069

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing and a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

Handwritten signature of Maximilian Boal in cursive.

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Bill Vizzo, Owner, Bill Vizzo Contractors, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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In the Matter of:)

Bill Vizzo Contractors, LLC)
483 Pumpkin Hill Road)
Shelton, CT 06484)

Respondent.)

ADMINISTRATIVE COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. TSCA-01-2013-0069

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

I. STATEMENT OF AUTHORITY

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

II. NATURE OF THE ACTION

2. This Complaint notifies Respondent Bill Vizzo Contractors, LLC that EPA has determined that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 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. EPA seeks civil penalties pursuant to Section 16 of

TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

III. STATUTORY AND REGULATORY BASIS

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, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the "Renovation, Repair and Painting Rule" or the "RRP Rule").

5. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all renovations performed for compensation in "target housing" and "child-occupied facilities." "Target housing" is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling. Child-occupied facility is defined as a

building or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days with in any week . . . provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at last 60 hours. 40 C.F.R. § 745.83. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. They may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83.

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 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 Section 409 of TSCA, 15 U.S.C. § 2689.

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

9. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000

per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

IV. GENERAL ALLEGATIONS

10. Respondent is a limited liability company formed under the laws of the State of Connecticut.

11. On or about April 24, 2012, Respondent entered into an oral contract with homeowner Timothy Divine to perform interior and exterior renovations at Mr. Divine's single-family residence located at 14 Northbrook Drive, Monroe, CT 06468 ("14 Northbrook Drive").

12. The residence at 14 Northbrook Drive was built in 1900.

13. Respondent performed work at 14 Northbrook Drive including power washing, priming, and sanding the exterior and interior surfaces of the residence.

14. Respondent's interior work at 14 Northbrook Drive disturbed more than six square feet of painted surface.

15. Respondent's exterior work at 14 Northbrook Drive disturbed more than twenty square feet of painted surface.

16. Renovation waste was not contained during Respondent's renovation work, resulting in paint chips and paint dust lying on the floor and ground inside and around the residence at 14 Northbrook Drive. The paint chips and dust remained after Respondent completed its work at 14 Northbrook Drive.

17. At all times relevant to this Complaint, the work performed by Respondent at 14 Northbrook Drive was a "renovation," as defined in 40 C.F.R. § 745.83.

18. At all times relevant to this Complaint, Respondent's renovation work at 14 Northbrook Drive was a "renovation for compensation" subject to the RRP Rule pursuant to 40 C.F.R. § 745.82. Furthermore, Respondent's work at 14 Northbrook Drive did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

19. At all times relevant to this Complaint, Respondent was a "firm," as defined in 40 C.F.R. § 745.83

20. On April 30, 2012, Mr. Divine terminated the contract with Respondent.

21. After terminating the contract with Respondent, Mr. Divine performed a test at 14 Northbrook Drive that detected the presence of lead.

22. On June 5, 2012, Mr. Divine filed a complaint with EPA reporting that Respondent had not provided him with the "Renovate Right" information pamphlet before beginning renovation work at 14 Northbrook Drive and that Respondent's performance of sanding and power washing on the exterior surface of the residence at 14 Northbrook Drive left dust and paint chips on the ground around 14 Northbrook Drive.

23. On September 12, 2012, an EPA inspector conducted an inspection at Respondent's office located at 483 Pumpkin Hill Road, Shelton, CT and met with Respondent's owner, William J. Vizzo, regarding Respondent's compliance with TSCA and the RRP Rule.

24. During the September 12, 2012 inspection, Mr. Vizzo acknowledged that he contracted with Mr. Divine to perform a renovation project at 14 Northbrook Drive.

25. During the September 12, 2012 inspection, Mr. Vizzo signed a written statement acknowledging that:

- a. Respondent was not certified pursuant to the RRP Rule, and it had not been certified when it performed renovation work at the residence at 14 Northbrook Drive;
- b. Respondent did not distribute any EPA information pamphlet during its renovation work at 14 Northbrook Drive;
- c. Respondent did not follow lead-safe work practices required by the RRP Rule at the residence at 14 Northbrook Drive.

26. Respondent later became an RRP-certified firm on or about November 1, 2012.

27. Based upon EPA's inspection, other information and documents obtained from Respondent, and EPA's subsequent investigations, EPA has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

V. VIOLATIONS

COUNT I: Failure to Provide Renovate Right Information Pamphlet

28. Complainant re-alleges paragraphs 1 through 27.

29. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA-approved "Renovate Right" information pamphlet, and comply with one of the following: (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

30. Respondent did not provide the Renovate Right information pamphlet to Mr. Divine before performing renovation work at the target housing located at 14 Northbrook Drive, Monroe, CT 06468.

31. Accordingly, Respondent's failure to provide the Renovate Right information pamphlet constitutes one violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA.

COUNT II: Failure to Apply for Firm Certification

32. Complainant re-alleges paragraphs 1 through 31.

33. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

34. Respondent did not apply to EPA for RRP-certification before performing renovation work for compensation at the residence located at 14 Northbrook Drive.

35. Accordingly, Respondent's failure to apply to EPA for RRP-certification before performing renovation work for compensation at the residence located at 14 Northbrook Drive constitutes one violation 40 C.F.R. § 745.89(a) and Section 409 of TSCA.

COUNT III: Failure to Assign Certified Renovators

36. Complainant re-alleges paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 745.89(d), 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.

38. At all times relevant to this Complaint, Respondent's employees were not RRP-certified renovators, and no RRP-certified renovators were assigned to the renovation performed by Respondent at 14 Northbrook Drive.

39. Accordingly, Respondent's failure to assign certified renovators to the renovation work at the residence at 14 Northbrook Drive constitutes a violation of 40 C.F.R. § 745.89(d)(1) and (d)(2) and Section 409 of TSCA.

COUNT IV: Failure to Comply with Work Practice Standards:

Failure to Cover Ground with Impermeable Material during Renovations

40. Complainant re-alleges Paragraphs 1 through 39.

41. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

42. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms 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.

43. During the exterior renovation work at 14 Northbrook Drive, Respondent did not cover the ground with plastic sheeting or other disposable impermeable material extending beyond the perimeter of surfaces undergoing renovation to collect falling paint debris. Respondent's exterior renovation work resulted in paint chips and paint dust lying on the ground around the residence at 14 Northbrook Drive.

44. Respondent's failure to 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, for the renovation project at the residence at 14 Northbrook Drive constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

COUNT V: Failure to Comply with Work Practice Standards:

Failure to Contain Renovation Waste

45. Complainant re-alleges Paragraphs 1 through 44.

46. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

47. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases or dust and debris before the waste is removed from the work area for storage or disposal. Pursuant to 40 C.F.R. § 745.85(a)(4)(ii), at the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

48. As described in Paragraph 16 above, Respondent did not contain renovation waste during Respondent's renovation work, resulting in paint chips and paint dust lying on the floor and ground inside and around the residence at 14 Northbrook Drive. The paint chips and dust remained after Respondent completed its work at 14 Northbrook Drive.

49. Accordingly, Respondent's failure to contain renovation waste during Respondent's renovation work at 14 Northbrook Drive constitutes one violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(4)(i) and (ii), and Section 409 of TSCA.

VI. PROPOSED CIVIL PENALTY

50. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation described above. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 and on and before January 12, 2009, are subject to penalties up to \$32,500 per day of violation. Violations that occurred after January 12, 2009, are subject to penalties up to \$37,500 per day per violation.

51. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that EPA consider the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on its ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require.

52. To assess a penalty for the alleged violations in this Complaint, EPA will take into account the particular facts and circumstances of this case with specific references 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 ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable

calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

53. Pursuant to 40 C.F.R. § 22.19, within 15 days after Respondent files its prehearing information exchange, EPA will specify the proposed penalty and explain how the proposed penalty was calculated. Any proposed penalty in this matter will be developed based upon the best information available to EPA, but any such penalty may also be adjusted if Respondent is able to establish that the proposed penalty would impair its ability to continue in business by providing EPA with adequate financial documentation.

54. By this Complaint, EPA seeks to assess civil penalties against Respondent of up to \$32,500 per day per violation for violations occurring on or before January 12, 2009 and up to \$37,500 per day per violation for violations occurring after January 12, 2009, as set forth below:

55. Count I: Failure to Provide Renovate Right Information Pamphlet. Respondent failed to provide the Renovate Right information pamphlet to Mr. Divine before performing renovation work at the target housing located at 14 Northbrook Drive, Monroe, CT 06468. The RRP Rule requirements are designed to limit exposure to lead during renovations. A firm's failure to provide the Renovate Right information pamphlet results in a high probability of impairing a homeowner's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regards to renovations. In addition, 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. Thus, the absence of a child under six years old at the residence at 14 Northbrook Drive means

that Respondent's failure to provide the Renovate Right information pamphlet had the potential for lesser amount of damage to human health or the environment.

56. Count II: Failure to Apply for Firm Certification. Respondent failed to apply to EPA for RRP-certification before performing renovation work for compensation at the residence located at 14 Northbrook Drive. The RRP Rule requirements are designed to limit exposure to lead during renovations. The certification requirement is important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure of a firm to obtain certification to perform renovations results in a medium probability that unqualified firms will improperly perform renovations, increasing the risk that exposures to lead will be inadequately controlled during renovations. In addition, 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. Thus, the absence of a child under six years old at the residence at 14 Northbrook Drive means that Respondent's failure to obtain firm certification had the potential for lesser amount of damage to human health or the environment.

57. Count III: Failure to Assign Certified Renovators. At all times relevant to this Complaint, Respondent's employees were not RRP-certified renovators, and no RRP-certified renovators were assigned to the renovation performed by Respondent at 14 Northbrook Drive. The RRP Rule requirements are designed to limit exposure to lead during renovations. The failure to ensure that a certified renovator is assigned to a renovation results in a high probability of a renovation firm failing to comply with required work practice standards which are important to ensure that firms are protecting children and other residents while renovations are ongoing. In

addition, 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. Thus, the absence of a child under six years old at the residence at 14 Northbrook Drive means that Respondent's failure to assign a certified renovator to the renovation project at 14 Northbrook Drive had the potential for lesser amount of damage to human health or the environment.

58. Count IV: Failure to Comply with Work Practice Standards: Failure to Cover Ground with Impermeable Material during Renovations. Respondent did not cover the ground with plastic sheeting or other impermeable material covering the ground in the work area of the renovation project to collect falling paint debris at the residence located at 14 Northbrook Drive. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. The failure to cover the ground in the work area creates a high probability that the soil surrounding the work area could become contaminated with lead and that children could also subsequently become exposed to lead by playing in or ingesting the contaminated soil. In addition, 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. Thus, the absence of a child under six years old at the residence at 14 Northbrook Drive means that Respondent's failure to cover the ground had the potential for lesser amount of damage to human health or the environment.

59. Count V: Failure to Comply with Work Practice Standards: Failure to Contain Renovation Waste. Respondent did not contain renovation waste during Respondent's renovation work, resulting in paint chips and paint dust lying on the floor and ground inside and around the residence at 14 Northbrook Drive. The paint chips and dust remained after Respondent completed its renovation work at 14 Northbrook Drive. The failure to contain renovation waste during renovation activities creates a high probability that lead dust will be inadequately controlled during and after renovations, resulting in an increased risk of exposure to lead. The RRP Rule requirements are designed to limit exposure to lead during renovations and the work practice requirements are important to ensure that firms are protecting children and other residents while renovations are ongoing. In addition, 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. Thus, the absence of a child under six years old at the residence at 14 Northbrook Drive means that Respondent's failure to contain renovation waste had the potential for lesser amount of damage to human health or the environment.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

60. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained

in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Maximilian Boal, the attorney assigned to represent EPA in this matter, at:

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912

VIII. INFORMAL SETTLEMENT CONFERENCE

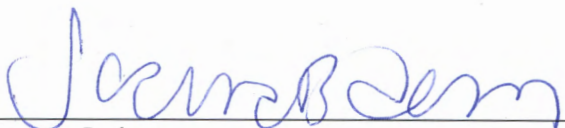
61. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Maximilian Boal, Enforcement

Counsel, at (617) 918-1750, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not extend the thirty-day period within which a written Answer must be submitted to avoid default.

Maximilian Boal, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

9/27/13
Date


Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

_____))
In the Matter of:))
))
Bill Vizzo Contractors, LLC))
483 Pumpkin Hill Road))
Shelton, CT 06484))
))
Respondent.))
_____)

Docket No. TSCA-01-2013-0069

CERTIFICATE OF SERVICE

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 (ORA18-1)
Boston, Massachusetts 02109-3912

Copy, including 40 C.F.R.
Part 22 and RRP Penalty Policy
(Certified Mail, Return Receipt
Requested):

Bill Vizzo, Owner
Bill Vizzo Contractors, LLC
483 Pumpkin Hill Road
Shelton, CT 06484

Dated: 9/27/2013



Maximilian Boal
Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912