

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SERVICE BY
UPS

Gentile Construction and General Contracting
2527 South 11th Street
Philadelphia, PA 19148-4405
Attn: Frederick Gentile

MAY 17 2018

Re: Complaint and Notice of Opportunity for Hearing
EPA Docket No. TSCA-03-2018-0092

Dear Mr. Gentile:

Enclosed please find a copy of the Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") filed today with the Regional Hearing Clerk concerning alleged violations by you, while doing business as Gentile Construction and General Contracting, of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, which seeks to control exposure to lead-based paint hazards in residential housing. You should read and analyze the Complaint carefully to determine the alternatives available to you in responding to the alleged violations, proposed penalty, and compliance requirements.

The Complaint states that you failed to post warning signs, failed to remove all objects from the work area or to cover them, failed to close all ducts opening in the work area, failed to close all windows and doors in the work area, failed to cover the floor surface, failed to contain waste, failed to obtain initial firm certification, failed to obtain a written acknowledgement of provision of EPA's lead hazard information pamphlet, and failed to make available all records demonstrating the performance of all lead-safe work practices and the Respondent's compliance with post-renovation cleaning requirements.

You must file an Answer to this Complaint within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Your failure to respond to this Complaint by specific Answer within thirty (30) days of your receipt of the Complaint will constitute an admission of the Complaint's allegations. If you fail to file an Answer, EPA will file a Motion for a Default Order. This could result in the issuance of a Default Order imposing the Complaint's proposed penalty without further proceedings.

You may choose to request a hearing to contest any matter set forth in the Complaint. You must include your hearing request in your Answer to this Complaint. Whether or not you request a hearing, you may ask for an informal settlement conference to discuss resolution of this case.

I am EPA's attorney assigned to this case. If you are represented by legal counsel, your counsel can contact me to request an informal settlement conference or for any other reason by

mail at the following address:

Philip Yeany
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

My telephone number is (215) 814-2495 and my email address is yeany.philip@epa.gov. If you are not represented by an attorney, you may contact Ms. Annie Hoyt, EPA's technical representative in this matter, at 410-305-2640 or her email address at hoyt.annie@epa.gov.

To the extent that your business qualifies as a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA), enclosed is an *Information for Small Businesses* sheet, which provides information on compliance assistance and on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve you of your obligation to file a timely answer to the Complaint, or create for you any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Also enclosed is a copy of 40 C.F.R. Part 22, *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"). The Consolidated Rules govern EPA's administrative adjudicatory proceedings such as the filing of the enclosed complaint against you and any subsequent assessment of an administrative civil penalty.

Sincerely,



Philip Yeany
Senior Assistant
Regional Counsel

Enclosures

cc: Annie Hoyt (w/o enclosures)

EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

2. The Respondent in this action is Frederick Gentile (the “Respondent”). This Complaint alleges violations by the Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation*, in connection with a renovation conducted at Stoneleigh Apartments, 4524-4538 Walnut Street, Philadelphia, PA 19139.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

3. EPA and the Office of Administrative Law Judges have jurisdiction over this matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. § 745.87, and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
4. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), Pub. L. 102–550, title X, Oct. 28, 1992, 106 Stat. 3897. The RLBPHRA addresses the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations.
5. Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with any provision of *Subchapter IV – Lead Exposure Reduction* of TSCA, or with any rule issued thereunder.

6. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.
7. EPA promulgated 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) under the authority of *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63 Fed. Reg. 29919).
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, except as described in 40 C.F.R. §§ 745.82(a) and (b).
9. Pursuant to 40 C.F.R. § 745.82(a), the requirements of the RRP Rule do not apply to renovations in target housing where a determination has been made that the components affected by the renovation are free of lead-based paint.
10. Pursuant to 40 C.F.R. § 745.82(b), the information distribution requirements of 40 C.F.R. § 745.84 do not apply to renovations that are emergency renovations.
11. Pursuant to 40 C.F.R. § 745.83, the definitions in 40 C.F.R. § 245.103 also apply to the RRP Rule.
12. Pursuant to 40 C.F.R. § 745.83, the term “person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.
13. 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.

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

15. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition work, electrical work, and plumbing, that disrupt six (6) square feet or less of painted surface per room for interior activities or twenty (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 surfaces.

16. Pursuant to 40 C.F.R. § 745.103, “housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.
17. 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 an EPA-authorized State or Tribal program.
18. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means any housing constructed prior to 1978, except that the term “target housing” does not include housing for the elderly, housing for persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
19. The State of Pennsylvania does not have an approved state lead-based paint poisoning prevention program authorized by Subpart Q of 40 C.F.R. Part 745.

III. GENERAL ALLEGATIONS

20. At all times relevant to the violations alleged in this Complaint, the Respondent was doing business as Gentile Construction and General Contracting.
21. The Respondent is a “person.”
22. The Respondent is and, at all times relevant to the allegations herein was, the sole proprietor of Gentile Construction and General Contracting (the “Firm”).
23. The Respondent is a “firm.”

24. Upon information and belief, at some time prior to April 7, 2015, the Respondent entered into a contract with the owner of the building at Stoneleigh Apartments, 4524-4538 Walnut Street, Philadelphia, PA 19139 (the "Apartments") to renovate the Apartments for compensation.
25. The renovation work primarily consisted of the scraping and repainting of the exterior trim and soffits of the Apartments.
26. The Apartments were built prior to 1978.
27. Upon information and belief, the Apartments consist of at least five residential dwelling units.
28. On April 7, 2015, an EPA employee observed the renovation work taking place at the Apartments.
29. The EPA employee took photographs of the exterior of the Apartments ("April 7 Photographs").
30. The April 7 Photographs show that the Respondent had started to remove paint from the woodwork on the Apartments' exterior.
31. The April 7 Photographs show that the Respondent did not post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area.
32. The April 7 Photographs show that the Respondent did not cover the outside surface with taped down plastic sheeting or impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

33. On April 9 and April 14, 2015, an EPA inspector conducted inspections of the Apartments.
34. During the April 9 and April 14, 2015 inspections of the Apartments, the EPA inspector took photographs of the exterior of the Apartments (“April 9 and April 14 Photographs”).
35. The April 9 and April 14 Photographs show that the Respondent had started to remove paint from the woodwork on the Apartments’ exterior.
36. The April 9 and April 14 Photographs show that the Respondent did not post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area.
37. The April 9 and April 14 Photographs show that the Respondent did not cover the outside surface with taped down plastic sheeting or impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.
38. On May 27, 2015, EPA conducted an inspection at the home office of the Respondent to determine the Respondent’s compliance with the RRP Rule (“May 27 Inspection”).
39. During the May 27 Inspection, the EPA inspectors met with the Respondent.
40. During the May 27 Inspection, the Respondent stated to the EPA inspector that he was not aware of the requirements of the RRP Rule.
41. The Respondent did not have firm certification from EPA to perform renovations at target housing.

42. According to the Respondent, neither he nor any of his workers were certified renovators.
43. Upon information and belief, the Respondent did not ensure that a certified renovator was assigned to the renovation of the Apartments.
44. The Apartments were not “housing for the elderly” and did not qualify as “0-bedroom dwelling[s]” as those terms are defined by 40 C.F.R. § 745.103.
45. The Apartments were not for persons with disabilities.
46. The renovation of the Apartments affected more than twenty (20) square feet of exterior painted surface.
47. During the May 27 Inspection, the Respondent’s file for the Apartments did not have either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA’s Lead Hazard Information Pamphlet to the owner of the Apartments.
48. During the May 27 Inspection, the EPA inspector requested the Respondent’s records for the Apartments documenting that the Respondent complied with the requirements for the performance of lead-safe work practices in 40 C.F.R. § 745.85(a) and the requirements for the performance of the post-renovation cleaning in 40 C.F.R. § 745.85(b).
49. The Respondent did not produce records for the Apartments documenting that the Respondent complied with the requirements for the performance of lead-safe work practices in 40 C.F.R. § 745.85(a) and the requirements for the performance of the

- post-renovation cleaning in 40 C.F.R. § 745.85(b) during the May 27 Inspection and, up to the date of the filing of this Complaint, has not supplied the records to EPA.
50. At all times relevant to this Complaint, the Apartments were “target housing” as such term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
51. Because the renovations of the Apartments, including the disturbing and/or removal of paint from the interior of the Apartments, affected more than twenty (20) square feet of exterior painted surface, the renovations were not “minor repair and maintenance activities,” as defined by 40 C.F.R. § 745.83.
52. A search of EPA's Federal Lead-based Paint Program database shows that from April 7, 2015 to May 27, 2015, no firm by the name “Gentile” had obtained certification from EPA under 40 C.F.R § 745.89(a)(1) prior to performing renovations at target housing for compensation.
53. Upon information and belief, the renovation of the Apartments was not part of an abatement, as defined by 40 C.F.R. § 745.223.
54. Upon information and belief, prior to the renovation, the components of the Apartments affected by the renovation were not determined to be free of lead-based paint, as described in 40 C.F.R. § 745.82(a).
55. Upon information and belief, the renovation of the Apartments was not an emergency renovation, as defined by 40 C.F.R. § 745.82(b).
56. The disturbing and/or removal of paint from the exterior of the Apartments was a “renovation” as such term is defined by 40 C.F.R. § 745.83.
57. Because the renovation of the Apartments was a “renovation performed for

compensation in target housing,” and did not meet any exception in 40 C.F.R. §§ 745.82(a) or (b), the Respondent was required to meet the obligations of 40 C.F.R. Part 745, Subpart E.

IV. VIOLATIONS

Count I – Failure to Obtain Initial Firm Certification

58. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
59. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89(a)(1), prior to performing renovations at target housing for compensation, firms are required to obtain certification from EPA under § 745.89(a)(1).
60. The Respondent, individually and doing business as the Firm, was not EPA certified under 40 C.F.R. § 745.89(a)(1) prior to or at the time of performing renovations at the Apartments, as described herein.
61. The Respondent’s failure to obtain certification prior to or at the time of performing renovations at the Apartments constitutes a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count II – Failure to Ensure that Certified Renovators Were Assigned to the Renovation

62. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
63. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations on target housing are required to ensure that a certified renovator is assigned to the renovation and that

the certified renovator discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

64. The Respondent did not ensure that a certified renovator was assigned to the renovation and that the certified renovator discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

65. The Respondent's failure to ensure that a certified renovator was assigned to the renovation and that the certified renovator discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 is a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count III – Failure to Make Available All Records Demonstrating the Performance of All Lead-Safe Work Practices

66. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

67. Pursuant to 40 C.F.R. § 745.86, firms performing renovations on target housing are required to retain for three years following completion of the renovation and, if requested, make available to EPA all records necessary to document that the renovator(s) complied with the requirements of 40 C.F.R. § 745.85, including performance of the lead-safe work practices described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b).

68. The Respondent has not made available to EPA, after EPA requested them, all records demonstrating the performance of all lead-safe practices described in 40 C.F.R. §

745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b) during the 2013 renovation of the Apartments.

69. The Respondent's failure to make available to EPA all records necessary to document that the renovator complied with the requirements of 40 C.F.R. § 745.85 with respect to the renovation of the Apartments is a violation of 40 C.F.R. § 745.86 and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IV – Failure to Post Warning Signs

70. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
71. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area, with an exception not relevant to this matter.
72. At the time of that the April 7, April 9 and April 14 Photographs of the Apartments were taken, the Respondent had not posted the warning signs as required by 40 C.F.R. § 745.85(a)(1).
73. The Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area is a violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count V - Failure to Cover the Outside Surface with Taped Down Plastic Sheeting or Impermeable Material

74. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

75. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires that the renovator 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, unless the property line prevents 10 feet of such ground covering.
76. At the time that the April 7, April 9 and April 14 Photographs of the Apartments were taken, the Respondent had not covered 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.
77. The 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, is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VI - Failure to Obtain a Written Acknowledgement of Provision of EPA's Lead Hazard Information Pamphlet or Written Certification of Mailing of the Pamphlet.

78. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
79. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning a renovation of any residential dwelling unit of target housing, the firm performing the

renovation must provide EPA's Lead Hazard Information Pamphlet to the owner of the unit that is undergoing renovations.

80. In addition, 40 C.F.R. § 745.84(a)(1) requires renovators to either obtain from the owner of the unit undergoing renovation a written acknowledgement that the owner was provided with EPA's Lead Hazard Information Pamphlet (40 C.F.R. § 745.84(a)(1)(i)) or obtain a certificate of mailing the pamphlet to the owner at least seven days prior to the renovation (40 C.F.R. § 745.84(a)(1)(ii)).
81. All the dwelling units in this matter are owned by the owner of the Apartments.
82. The Respondent did not obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA's Lead Hazard Information Pamphlet to the owner of the Apartments.
83. Respondent's failure to obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) is a violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

V. PROPOSED CIVIL PENALTY

84. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, (15 U.S.C. § 2615(a)), 40 C.F.R. § 745.87(d)), the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31

U.S.C. § 3701 note), and the subsequent *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. § 19.4, authorize a penalty of not more than \$38,114 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689 that occurs after November 2, 2015 and is assessed after January 15, 2017.

85. For purposes of determining the amount of any civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require (“statutory factors”). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERP”), revised April 2013, a copy of which is enclosed with this Complaint. The *ERP* represents an analysis of the statutory factors listed above, as well as guidance on their application to particular cases. The *ERP* also provides a rational, consistent, and equitable calculation methodology for applying these factors to particular cases.
86. Calculated pursuant to the *ERP*, EPA proposes to assess a civil penalty of nineteen thousand twenty dollars and zero cents (\$ 19,020.00) against the Respondent for the six (6) violations alleged herein.

87. The calculations for the proposed penalty are detailed in the Appendix to this Complaint.
88. EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay as an adjustment to the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of the Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.
89. EPA's penalty policies represent an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

90. The Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

91. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts alleged in this Complaint that are not admitted, denied or explained in the Answer will be considered admitted.

92. Failure of the Respondent to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. Default shall constitute, for the purposes of this proceeding only, an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations.

93. The hearing will be conducted in accordance with the provisions of the *Consolidated Rules of Practice*. Any hearing requested by the Respondent will be held at a location

to be determined at a later date pursuant to the *Consolidated Rules of Practice* at 40 C.F.R. § 22.21(d).

94. A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Philip Yeany, at:

Philip Yeany (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SETTLEMENT CONFERENCE

95. Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, the Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer to the Complaint.
96. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

97. If the Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Yeany at (215) 814-2495 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve the Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VIII. QUICK RESOLUTION

98. In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, the Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If the Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules of Practice*, no Answer need be filed.
99. If the Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the *Consolidated Rules of Practice*, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk and a copy shall be provided to Mr. Yeany. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty

(60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.

100. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice*, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.
101. Payment of the civil penalty amount required under the terms of Paragraph 86, above, shall be made as follows:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2018-0092**;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Craig Steffen, 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. Martin Luther King Drive
Cincinnati, OH 45268-0001

102. Respondent may also pay the civil penalty amount described in Paragraph 86, above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Craig Steffen, 513-487-2091

c. On-Line Payment Option:

<https://www.pay.gov/public/form/start/11751879>

Open and complete the form.

d. Additional payment guidance is available at:

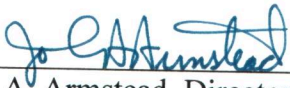
<https://www.epa.gov/financial/makepayment>

103. At the same time that any payment is made, Respondent shall submit copies of the check(s), or verification of the wire transfer(s) or electronic payment(s) to the Regional Hearing Clerk and Mr. Yeany.

IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

104. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that 40 C.F.R. § 22.8 of the *Consolidated Rules of Practice* prohibits any *ex parte* discussion of the merits of a case between either the trial staff, any interested person outside the Agency, or any representative of such person to the proceeding; and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any other person likely to advise these officials in the decision of the case, after the Complaint is issued.

5.10.18
Date



John A. Armstead, Director
Land and Chemicals Division

APPENDIX

VIOLATIONS	CIRCUMSTANCE LEVEL	PENALTY
Count I	3a (Item VII-1 on ERP Page A-3)	\$4,500
Count II	3a (Item VII-5 on ERP Page A-3)	\$4,500
Count III	6a (Item VI-1 on ERP Page A-3)	\$600
Count IV	1b (Item I-8 on ERP Page A-1)	\$2,840
Count V	2a (Item IX-8 on ERP Page A-5)	\$6,000
Count VI	4b (Item V-1 on ERP Page A-2)	\$580
TOTAL PROPOSED PENALTY		\$19,020

ENFORCEMENT RESPONSE POLICY (ERP)

EPA has calculated the proposed penalty for each violation using Appendices A and B of the ERP.

VIOLATIONS

Count I – Failure to obtain initial firm certification.

Count II – Failure to ensure that certified renovators were assigned to the renovation

Count III – Failure to make available all records demonstrating the performance of all lead-safe work practices.

Count IV – Failure to post warning signs.

Count V - Failure to cover the outside surface with taped down plastic sheeting or impermeable material.

Count VI - Failure to obtain a written acknowledgement of provision of EPA's lead hazard information pamphlet or written certification of mailing of the pamphlet.

EXTENT LEVEL

EPA has determined the Extent Level for each violation is minor.

CIRCUMSTANCE LEVEL

EPA arrived at the Circumstance Level for each violation based upon the violations described in Appendix A of the ERP and the applicable Circumstance Levels.

PENALTY

Based upon the Extent and Circumstance Levels in the ERP Appendices A and B, EPA calculated the proposed penalty using the matrix on Page B-2 of Appendix B,

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I hand delivered to the Regional Hearing Clerk, EPA Region III, the original Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the same. In addition, I caused a true and correct copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing to be served as follows:

Via UPS

Frederick Gentile
d/b/a
Gentile Construction and General Contracting
2527 South 11th Street
Philadelphia, PA 19148-4405

5/17/18

Date

Philip Yeany

Philip Yeany
Senior Assistant
Regional Counsel

U.S. EPA-REGION 3-RHC
FILED-17MAY2018pm3:00

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I hand delivered to the Regional Hearing Clerk, EPA Region III, the original Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the same. In addition, I caused a true and correct copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing to be served as follows:

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