

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8



In the Matter of:)
)
Armendariz, LLC)
27705 E. 160th Ave.)
Brighton, Colorado 80603)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket No. TSCA-08-2024-0002

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. INTRODUCTION

1. In this Complaint and Notice of Opportunity for Hearing (Complaint), the U.S. Environmental Protection Agency (EPA) proposes to assess a civil administrative penalty against Armendariz, LLC (Respondent), as more fully described below.

II. JURISDICTIONAL ALLEGATIONS

2. This Complaint is issued under the authority vested in the Administrator of the EPA (Administrator) by section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The undersigned individual has been duly delegated the authority to execute this complaint.

3. This proceeding is subject to 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, a copy of which is being provided to Respondent with this Complaint.

4. 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, and federal regulations

promulgated under TSCA and the Residential Lead-Based Paint Hazard Reduction Act of 1992(the 1992 Act), 42 U.S.C. § 4851 *et seq.*, including 40 C.F.R. part 745, subpart E, and 40 C.F.R. part 745, subpart L, as amended (collectively referred to herein as the Renovation, Repair and Painting Rule or RRP Rule)]. Respondent is also hereby notified that Complainant seeks civil penalties pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

III. STATUTORY AND REGULATORY AUTHORITY

5. Congress passed the 1992 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. Among the stated purposes of the 1992 Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA sections 401–412, 15 U.S.C. §§ 2681–2692.

6. 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), which 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), which 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.”

7. 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, now commonly referred to as the “RRP Rule.”

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

9. The RRP Rule addresses “target housing,” as defined by section 401(17) of TSCA, 15 U.S.C. § 2681(17). “Target housing” is any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). 15 U.S.C. § 2681(17).

10. The RRP Rule applies to all renovations performed for compensation in target housing and in “child-occupied facilities.” 40 C.F.R. § 745.82.

11. “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. 40 C.F.R. § 745.83.

12. “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. 40 C.F.R. § 745.83. Renovations include, but are 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. Renovation does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

13. “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. 40 C.F.R. § 745.83.

14. “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. 40 C.F.R.

§ 745.83.

15. Under the RRP Rule, except in circumstances not relevant here, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iii. Follow lead-safe work practices as described in the RRP Rule; and
- iv. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.89(d)(1)–(5), 745.85, 745.86(a) and (b).

16. Each violation of the RRP Rule is a violation of section 15 or 409 of TSCA. 15 U.S.C. §§ 2614, 2689; *see also* 40 C.F.R. § 745.87.

17. Any person who violates section 15 or 409 of TSCA shall be liable to the United States for a civil penalty of up to \$48,512 per violation per day. *See* 15 U.S.C. § 2615; 40 C.F.R. part 19; 88 Fed. Reg. 247 (Dec. 27, 2023).

IV. GENERAL ALLEGATIONS

18. Respondent, Armendariz LLC, is a Colorado limited liability company, organized in or around 2013, with its principal business offices located at 5438 Snapdragon Court, Brighton, Colorado, 80601.

19. Armendariz LLC provides residential renovation services in and around the Denver, Colorado area. The Respondent specializes in exterior painting and operates under the direction of its owner and manager, Felix Erick Humberto Armendariz.

20. In June 2022, the Respondent performed renovation activities at a residential property located at 1345 Gaylord Street, Denver, CO, 80206 (hereinafter, the “Gaylord Renovation”).

21. The Gaylord Renovation involved the preparation and painting of the exterior of the residential property located at 1345 Gaylord Street, Denver, CO, 80206 (hereinafter, the Property).

22. The Property is privately owned and was built in 1918.

23. On or about June 1, 2022, a duly authorized EPA inspector conducted a compliance inspection at the Gaylord Renovation and observed the exterior conditions at the Property.

24. Following the June 1, 2022, inspection at the Property, the EPA sought records and other information relevant to the Respondent’s compliance with RRP Rule requirements. To date, the Respondent has not provided the requested records.

25. The Gaylord Renovation performed by the Respondent, as described in Paragraphs 20 and 21 above, constituted a renovation for compensation within the meaning of TSCA section 406(b) and the RRP Rule. The Gaylord Renovation does not fall within any exemption set forth in 40 C.F.R. § 745.82.

26. The Property described in Paragraphs 20 and 21 above that is associated with the violations alleged in this Complaint is “target housing” as defined in section 401(17) of TSCA and 40 C.F.R. § 745.103. The Property does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including

40 C.F.R. § 745.82).

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

V. FINDINGS OF VIOLATIONS

28. The EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the inspections and EPA’s investigation of the facts and circumstances underlying the violations.

FIRST COUNT

Failure to Obtain Firm Certification

29. Paragraphs 1 through 28, above, are incorporated by reference as if fully set forth herein.

30. No firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82. 40 C.F.R. § 745.81(a)(2). 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.

31. In June 2022, Respondent conducted the Gaylord Renovation that involved the disturbance of the entire exterior painted surface of the home, scraping paint in localized areas of the exterior of the home in preparation for painting, and littering lead paint chips across the front porch of the Property, the neighboring property, and the parking lot behind the Property.

32. The Gaylord Renovation did not qualify as minor maintenance and repair activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

33. At no time before or during the Gaylord Renovation had Armendariz LLC obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a).

34. Armendariz LLC's performance of the Gaylord Renovation without being certified as a firm under 40 C.F.R. § 745.89 constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and section 409 of TSCA, 15 U.S.C. § 2689.

35. The above-referenced violation alleged in this First Count is a prohibited act under section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Ensure Certified Renovator Performs or Directs Work

36. Paragraphs 1 through 35, above, are incorporated by reference as if fully set forth herein.

37. Firms performing renovations in target housing must ensure that all individuals who perform renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. 40 C.F.R. § 745.89(d)(1).

38. Firms must ensure that a certified renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90. 40 C.F.R. § 745.89(d)(2).

39. At no time during the Gaylord Renovation was any person performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the Gaylord Renovation, as specified under 40 C.F.R.

§ 745.89(d)(1) and (d)(2).

40. Armendariz LLC's failure to ensure that a certified renovator was assigned to the Gaylord Renovation to carry out all the responsibilities in 40 C.F.R. §745.90 constituted a violation of 40 C.F.R. § 745.89(d)(1) and (d)(2).

41. The above-listed violation alleged in this Second Count is a prohibited act under section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. § 745.87 and is a violation for which penalties may be assessed pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

THIRD COUNT

Failure to Contain Waste from Renovation Activities

42. Paragraphs 1 through 41, above, are incorporated by reference as if fully set forth herein.

43. Firms performing renovations on target housing are required to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area. 40 C.F.R. § 745.85(a)(4)(i).

44. During the Gaylord Renovation, Respondent failed to contain dust and debris from renovation activities. The EPA inspector observed uncontained waste, including paint chips scattered around the Property. Respondent's failure to contain waste from renovation activities constituted a violation of 40 C.F.R. § 745.85(a)(4).

45. The above-listed violation alleged in this Sixth Count is a prohibited act under section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

VI. PROPOSED PENALTY

46. Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015 Inflation Adjustment Act, and EPA's Penalty Inflation Rule, at 40 C.F.R. § 19.4, the maximum penalty for each such TSCA violation was increased to \$48,512 for violations that occur after November 2, 2015, for which penalties are assessed on or after December 27, 2023. *See* 88 Fed. Reg. 247 (Dec. 27, 2023).

47. In determining the amount of any penalty to be assessed, section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B). To assess a penalty for the violations alleged herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 *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). A copy of the RRP Penalty Policy is enclosed with this Complaint. The RRP Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

48. By this Complaint, Complainant seeks to assess civil penalties of \$46,750 against

the Respondent, Armendariz LLC, for the following violations:

- i. FIRST COUNT: At least one violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) for performing renovation activities without EPA certification as a firm – The RRP Rule requirements are intended to prevent exposure to lead during renovations. A firm’s failure to obtain initial EPA certification prior to offering or performing renovations in target housing has a medium probability of impacting human health and the environment through, for example, failure to use best work practices, failure to convey to tenants the risks associated with renovations, and failure to have adequate knowledge for meeting all RRP Rule obligations.
- ii. SECOND COUNT: At least one violation of 40 C.F.R. §§ 745.89(d)(1) and (d)(2) for failure to assign and use certified renovators – A firm’s failure to assign and use certified renovators for renovation activities performed in target housing has a medium probability of impacting human health and the environment. The failure to assign and use certified renovators to discharge all renovator duties under the RRP Rule presents a medium probability that renovators will not, for example, use best renovation practices and EPA-approved methods during the work and, thereby, will increase the chances of an occupant’s exposure to lead during and/or after the renovation; and
- iii. THIRD COUNT: At least one violation of 40 C.F.R. § 745.85(a)(4) for failure to contain waste from renovation activities – A firm’s failure to ensure that all waste from renovation activities is contained to prevent releases of dust and debris before the waste is removed from the work area has a high probability of impacting human health and the environment. This is a major violation because the failure to ensure that all waste from renovation activities is properly contained presents a high probability that occupants of residential units in target housing will be exposed to lead during and/or after the renovation.

49. Enclosed with this Complaint is the EPA’s Proposed Penalty Summary, which specifies the proposed penalty amount of \$46,750 for all of the violations alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. The proposed penalty may be adjusted if the Respondent establishes bona fide issues or defenses relevant to the appropriate amount of the penalty.

VII. ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

50. Pursuant to 40 C.F.R. § 22.15(a), Respondent may file an Answer to contest any material fact upon which this Complaint is based, contend that the proposed penalty is inappropriate, or contend that it is entitled to judgment as a matter of law. Any such Answer to this Complaint must be filed within 30 days of service of this Complaint with the Regional Hearing Clerk at the following address. The Answer may be filed by email, using the email address below, pursuant to the instructions, conditions, and limitations of the Standing Order Designation of EPA Region 8 part 22 Electronic Filing System (May 8, 2020), a copy of which is being provided to Respondent with this Complaint.

Kate Tribbett, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC)
Denver, Colorado 80202
R8_Hearing_Clerk@epa.gov

51. A copy of the Answer and every other document filed in this action must be mailed, or sent by email, to the EPA enforcement attorney for this matter at the following address:

Colleen Adams, Office of Regional Counsel
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC-R)
Denver, Colorado 80202
adams.colleen@epa.gov

52. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for

opposing any proposed relief; and (iv) whether a hearing is requested. 40 C.F.R. § 22.15(b).

53. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. 40 C.F.R. § 22.15(b). Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. 40 C.F.R. § 22.15(d).

54. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. 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. 40 C.F.R. § 22.17(a). The penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final. 40 C.F.R. § 22.17(d).

55. Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty, 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 of the Consolidated Rules of Practice. Any such hearing would be conducted in accordance with 40 C.F.R. part 22. A request for a hearing must be incorporated into a written Answer.

VIII. SETTLEMENT CONFERENCE

56. Regardless of whether Respondent files an Answer or requests a hearing, Respondent may confer informally with the EPA concerning the alleged violations and the amount of any penalty. Such conference provides Respondent with an opportunity to respond

informally to the allegations in this Complaint, to provide any additional information that may be relevant to the disposition of this matter, and to explore any opportunities for settling this matter.

57. A request for an informal settlement conference does not extend the period within which a written Answer must be submitted, nor does it waive Respondent's right to request a hearing. The deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. Any request for an informal settlement conference should be directed to the EPA enforcement attorney for this matter at the address listed in Paragraph 70, or by phone at (303) 312-6673.

**IX. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR
CONFERENCE**

58. Respondent may resolve this proceeding at any time by paying the penalty amount proposed in this Complaint in full pursuant to 40 C.F.R. § 22.18(a). Such payment need not contain any response to, or admission of, the allegations in this Complaint. Such payment would waive Respondent's rights to contest the allegations in this Complaint and to appeal any final order resulting from this Complaint.

59. If such payment is made within 30 calendar days of the service of this Complaint, Respondent need not file an answer. Respondent may obtain a 30-day extension to pay the proposed penalty in full without filing an answer by complying with the requirements of 40 C.F.R. § 22.18(a)(2).

60. The payment shall be made by any method provided on the following website:
<https://www.epa.gov/financial/makepayment>.

61. Respondent shall identify each payment with the docket number appearing on this Complaint.

62. Within 24 hours of payment, Respondent shall email proof of payment to the Regional Hearing Clerk and the EPA Enforcement Attorney named above (at the addresses provided above). "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on this Complaint.

63. Neither the assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

X. EFFECTIVE DATE

64. The "Effective Date" of this Complaint is the date of service. The date of service is the date the Respondent or Respondent's authorized representative is personally served with this Complaint or signs a return mail receipt or other written verification of delivery, in accordance with the provisions of 40 C.F.R. §§ 22.5(b) and 22.7(c).

IN THE MATTER OF ARMENDARIZ, LLC

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

**DAVID
COBB**

Digitally signed by
DAVID COBB

Date: 2024.02.22

12:42:35 -07'00'

Date: _____

By: _____

David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street 8-ENF-AT-P
Denver, Colorado 80202-1129
Complainant