

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	
	)	<b>Docket No. TSCA-07-2019-0052</b>
<b>BJZ Development and Construction, L.L.C.</b>	)	
<b>16 Fleetwood Drive</b>	)	
<b>St. Louis, Missouri 63124</b>	)	
	)	
	)	
<b>Respondent</b>	)	<b>COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING</b>
	)	

**COMPLAINT**

Jurisdiction

1. This Complaint and Notice of Opportunity for Hearing (“Complaint”) serves as notice that the United States Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), has reason to believe that Respondent has violated Section 409 of the Toxic Substances Control Act (“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*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

2. This administrative action for the assessment of civil penalties is instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”), a copy of which is enclosed along with this Complaint.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA Region 7, is the Chief of the Toxics and Pesticides Branch at EPA, Region 7.

4. Respondent BJZ Development & Construction, L.L.C. is a limited liability company operating under the laws of the state of Missouri.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residence built prior to 1978, and regulations for the certification of such individuals and contractors.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education

Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule” or the “RRP Rule”). *See* Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The RRP Rule establishes work practice standards for renovations that disturb paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

9. The regulations at 40 C.F.R. §§ 745.80 and 745.82(a) provide that the regulations contained in 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities.

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

11. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or

any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as 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.

14. 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82.

15. 40 C.F.R. § 745.89(a)(1) provides that “firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

16. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure a certified renovator is assigned to each renovation performed by the firm and that they discharge all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

17. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. Pursuant to 40 C.F.R. § 745.81 (a)(4)(ii), all renovations must be performed in accordance with the work practice standards outlined in 40 C.F.R. § 745.85.

18. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply

with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart E. 40 C.F.R. § 745.87(d) provides that violators may be subject to civil and criminal sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

19. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorizes a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$39,873 for violations that occur after November 2, 2015, and are assessed after February 2, 2019.

#### **General Factual Allegations**

20. Respondent, at all times referred to herein, was a “person” as defined in 40 C.F.R. § 745.83.

21. Respondent, at all times referred to herein, was a “firm” as defined in 40 C.F.R. § 745.83.

22. Presently, and at the time of the actions described herein, Respondent is a limited liability company doing business in Missouri.

23. On April 26, 2018, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, the EPA conducted a work practice inspection (“Inspection”) into Respondent’s renovation activities at 5209 Wilson Avenue, St. Louis, Missouri (the “Property”) to evaluate

Respondent's compliance with TSCA and the requirements of the RRP Rule. A copy of the inspection report was mailed to Respondent on June 8, 2018.

24. At all times relevant to this Complaint, the renovation project at the Property was a "renovation for compensation" subject to the RRP Rule per 40 C.F.R. § 745.82.

25. At the time of Inspection, the Property was unoccupied and there were not children present at the Property. The Property was constructed between 1908 and 1916 and is "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17) and 40 C.F.R. § 745.103.

26. At the time of the Inspection, Respondent was neither a certified renovation firm nor a certified renovator.

27. As a result of the Inspection and additional information obtained by EPA, Complainant has identified the following violation of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth in 40 C.F.R. Part 745, Subpart E.

#### **Alleged Violations**

28. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

#### **Count One**

29. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for compensation must be certified by the EPA and have obtained initial certification prior to performance of renovations unless the renovation qualifies for one of the exceptions identified in §745.82(a) or (b).

30. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for

compensation on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. The regulation at 40 C.F.R. § 745.89(a)(1) requires firms that perform renovations for compensation to apply to the EPA for certification to perform renovations or dust sampling.

31. The EPA Inspection revealed that Respondent had not applied for or obtained certification from the EPA to perform renovations or dust sampling prior to performing the renovation on the Property.

32. The renovation did not qualify for one of the exceptions identified in §745.82(a).

33. Respondent's failure to apply for EPA certification and ensure that it obtained initial firm certification prior to performing the renovation at the Property for compensation is a violation of 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

### **Count Two**

34. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm must provide the owner of the unit with the EPA lead hazard information pamphlet no more than 60 days before beginning renovation activities.

35. The EPA Inspection revealed that Respondent failed to provide the owner of the unit with the EPA pamphlet.

36. Respondent's failure to provide the owner of the unit with the EPA pamphlet no more than 60 days before beginning renovation activities at the Property is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Three**

37. 40 C.F.R. § 745.89(d)(2) requires a firm performing renovations to ensure a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

38. The EPA Inspection revealed that Respondent failed to ensure that a certified renovator was assigned to the renovation of the Property and failed to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

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

**Count Four**

40. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. 40 C.F.R. § 745.85(a)(1) requires a firm performing renovations to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

41. The EPA Inspection revealed that Respondent failed to post any signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

42. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii).

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

**Relief**

43. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615 for violations of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. 2615 and based upon the facts set forth above, it is proposed that a civil administrative penalty be assessed against Respondent.

44. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondents: a) their ability to pay, b) the effect on their ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require.

45. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference 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.

46. Complainant proposes that Respondent be assessed a civil penalty in the amount of Seventeen Thousand Four Hundred and Ninety-Dour Dollars (\$17,494) for the TSCA violations alleged in this Complaint. *See* Attachment 1 to this Complaint explaining the reasoning for this penalty.

47. Complainant's civil penalty request is based on the best information available to the EPA at the time the Complaint is issued. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

**Payment of Proposed Penalty in Full**

48. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of \$17,494 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

A copy of the check or other payment must simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Chris Muehlberger, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Payment should reference the name and docket number of this Complaint.

**Payment of Proposed Penalty in Lieu of an Answer**

49. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth in Rule 22 of the Consolidated Rules. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(2) of the Consolidated Rules. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default, as set forth below.

**NOTICE OF OPPORTUNITY FOR HEARING**

**Answer and Request for Hearing**

50. Respondent must file a written Answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is

entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that a Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

51. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

A copy of the answer shall be sent to:

Chris Muehlberger, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

52. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(3)) must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the US Postal Service:

Hearing Clerk

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900R  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

If using UPS/FedEx/DHL:

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue NW  
Washington, DC 20460

### **Default**

53. If, within thirty (30) days of receipt of a Complaint, Respondent fails to: a) submit full payment of the proposed penalty; b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or c) file a written answer to the Complaint; a Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondents' right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

### **Informal Settlement Conference**

54. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the

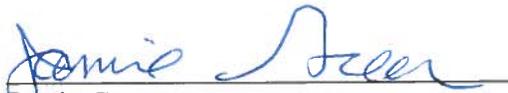
possibility of settlement. To request an informal settlement conference, please contact:

Chris Muehlberger, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Telephone (913) 551-7623

55. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

56. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

Date: 3/20/2019



Jamie Green  
Chief  
Toxics and Pesticides Branch  
Water, Wetlands and Pesticides Division

Date: 3.20.19



Chris Muehlberger  
Attorney  
Office of Regional Counsel

Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219, on 3.20.19. A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the EPA's "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" were sent by overnight mail on 3.20.19 to:

BJZ Development and Construction, L.L.C.  
16 Fleetwood Drive  
St. Louis, Missouri 63124.

  
\_\_\_\_\_  
Chris Muehlberger  
Assistant Regional Counsel