

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
	)	
Premier Flipping LLC	)	
8 Meadowlark Road	)	<b>Docket No.</b>
Enfield, Connecticut 06082	)	<b>TSCA-01-2018-0017</b>
	)	
	)	
Respondent.	)	
	)	
Proceeding under Section 16(a) of the	)	
Toxic Substances Control Act,	)	
15 U.S.C. § 2615(a)	)	
	)	

**PROPOSED DEFAULT ORDER**

**I. Introduction**

This proceeding was commenced on September 28, 2018, with the filing of a Complaint by the Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), against Respondent, Premier Flipping LLC (“Respondent”). The Complaint charges Respondent with one violation of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the federal regulations promulgated thereunder set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule” or “RRP Rule”). The Complaint proposed a total penalty of \$4,667.

Service of the Complaint was completed on July 25, 2019. To date, Respondent has not filed an Answer and has not requested an extension of time for filing an Answer. For the reasons set out below, Respondent is found to be in default pursuant to 40 C.F.R. 22.17(a) of the Rules of Practice and is assessed the proposed penalty of \$4,667.

**II. Findings of Fact and Conclusions of Law**

1. The Complainant is EPA.
2. The Respondent is a Connecticut corporation that operates a residential repair, renovation, and painting business in the East Hartford area in Connecticut. Respondent’s business address is 8 Meadowlark Rd., Enfield, Connecticut, 06082.

3. In 2017, Respondent was hired to install vinyl siding and aluminum trim on the exterior of a duplex building located at 32-34 Lilac Street, in East Hartford, Connecticut (“Subject Property”). According to East Hartford property records, the Subject Property is a two family, duplex building with six bedrooms built in 1900.
4. The renovations at the Subject Property came to the attention of EPA through a referral from the City of East Hartford, Connecticut Code Enforcement Office.
5. On May 16, 2017, EPA representatives (“Inspectors”) conducted an inspection at the Subject Property while Respondent was performing work at the property. The Inspectors found deteriorating painted wood trim and deteriorating painted asbestos transite siding that was disturbed as part of the siding and trim replacement. The Inspectors also found the area surrounding the building to be covered in paint chips and debris from construction work.
6. During the EPA Inspection, Respondent admitted to the Inspectors that he was not a certified firm as required by the RRP Rule.
7. At the time of the EPA Inspection, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.
8. At the time of the Inspection, Respondent was not certified as a firm under the RRP Rule.
9. Respondent’s activities at the Subject Property constituted a “renovation” as defined in 40 C.F.R. § 745.83.
10. Respondent’s activities at the Subject Property constituted a “renovation for compensation” subject to the RRP Rule. See 40 C.F.R. § 745.82.
11. The Subject Property, having been built before 1978, was “target housing,” as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the building does not satisfy the requirements for an exemption to the provisions of TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).
12. On March 16, 2018, EPA Region 1 issued to Respondent a “Notice of Investigation Results” and an “Expedited Settlement Agreement” that addressed a single RRP Rule violation, consistent with the EPA Office of Enforcement and Compliance Assurance’s August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. Respondent did not respond to EPA’s offer of expedited settlement.
13. On September 27, 2018, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a “Complaint and Notice of Opportunity for Hearing” (“Complaint”) alleging one count of RRP Rule violations. EPA did not receive a signed return receipt from Respondent.
14. After nine unsuccessful attempts to serve Respondent a copy of the Complaint by mail and through use of a professional process server, Complainant served the Complaint, including a copy of the 40 C.F.R. Part 22 rules, on Respondent by hand on July 25, 2019. See 40 C.F.R. §

22.5(b)(1) & (b)(1)(ii)(A). Respondent accepted the complaint package and signed a statement that he had received the Complaint. Accordingly, service was completed on July 25, 2019.

15. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply for EPA certification to perform renovations. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. The Subject Property is target housing because it was built in 1900 and is not housing for the elderly or disabled or a 0-bedroom dwelling.

16. At the time of the renovation at the Subject Property, Respondent had not applied for nor received RRP Rule firm certification from EPA. In performing an exterior renovation without certification from EPA under 40 C.F.R. § 745.89 at the Subject Property, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1). Respondent's failure to obtain RRP Rule firm certification prior to performing renovation work on the Subject Property constitutes a violation of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii).

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

### **III. Determination of Civil Penalty Amount**

18. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default “[t]he relief proposed in the complaint ... shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).

19. Section 16 of TSCA authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA, as adjusted up to \$40,576 by the Debt Collection Improvement Act, 40 C.F.R. Part 19 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, 28 U.S.C. § 2461. At the time the Complaint in this matter was issued, the maximum penalty for a violation of Section 409 of TSCA was \$38,892.

20. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or violations 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 other such matters as justice may require.

21. EPA has issued guidelines for penalties under 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”).

22. On March 16, 2018, EPA issued to Respondent a “Notice of Investigation Results” and an “Expedited Settlement Agreement,” that addressed a single RRP Rule violation for

performing, renovations or dust sampling for compensation without obtaining certification from EPA under 40 C.F.R. § 745.81(a)(2)(ii), consistent with the EPA Office of Enforcement and Compliance Assurance's August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. The Expedited Settlement Agreement offered to resolve the alleged violation for a penalty of \$200, in accordance with this policy.

23. Following the Respondent's failure to respond to the Expedited Settlement Agreement, Complainant proceeded with the filing of the Complaint.

24. According to Attachment I to the Complaint, Complainant considered the potential for harm resulting from Respondent's violations of the RRP Rule to be "minor" because there were no children under the age of 18 or pregnant women living in the target housing at the time of the violations. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. The documented absence of children or pregnant women warrant a minor extent factor. With regard to the "circumstances" of the violations, the failure to obtain certification from EPA prior to performing renovations results in a medium probability of impacting human health and the environment because a firm that is not certified by EPA is less likely to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, a violation of 40 C.F.R. § 745.81(a)(2)(ii) is a Level 3a violation.

25. Complainant did not include in the Complaint or Proposed Penalty Summary (Attachment I to the Complaint) information with respect to any history of prior violations, degree of culpability, ability to pay, or other such matters as justice may require. At the time of the Complaint, EPA did not have information regarding Respondent's ability to pay, or any information regarding Respondent's history of prior violations. Following service of the Complaint on Respondent, Respondent attested in writing to having a Gross Annual Revenue ("GAR") of \$40,000.

26. Based on this information, I have determined that the proposed penalty of \$4,667, is the appropriate civil penalty to be assessed against Respondent in that it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with TSCA. In doing so, I have taken into account the nature, circumstances, extent, and gravity of the violations, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require, which are all factors identified by TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2).

27. In assessing this penalty, I find persuasive the rationale for the calculations of the assessed penalty set forth in the Complaint, Attachment I of the Complaint, and in the Complainant's Memorandum in Support of Motion for Default Order filed in this proceeding and incorporate such rationale by reference into this Order.

### III. Order

1. For failing to file an Answer to the Complaint, Respondent is hereby found in

#### **DEFAULT.**

2. Respondent, Premier Flipping LLC, is assessed a civil administrative penalty in the amount of \$4,667.

3. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a bank, certified or cashier's check in the amount of \$4,667, payable to "Treasurer, United States of America"

The check should also note the docket number of this matter (TSCA-01-2020-0009), and should be forwarded to:

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

4. A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.

5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. See 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

6. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

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LeAnn Jensen  
Regional Judicial Officer