

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

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In the Matter of Precision Consulting, Inc., :
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:
Respondent. :
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Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
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COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. TSCA-02-2015-9275

U.S. Environmental Protection Agency-Reg 2
JAN 20 PM 2:36
REGIONAL HEARING CLERK

COMPLAINT

This is a civil administrative action instituted pursuant to § 16(a) of the Toxic Substances Control Act ("TSCA"), codified at 15 U.S.C. § 2615(a). This Complaint serves notice of Complainant's preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of the Lead-Based Paint Activities, Certification, and Training Rule codified at 40 C.F.R. Part 745, Subpart L, which were promulgated pursuant to § 402 of TSCA, hereinafter "Section 402", 15 U.S.C. § 2682.

Complainant in this proceeding, the Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

- 1. Respondent is Precision Consulting, Inc. (hereinafter "Respondent").
2. Respondent's primary place of business is located at 208-76 Grand Central Parkway, Suite #2A, Queens, NY 11427.
3. Wayne Gladney owns and/or is an officer of Precision Consulting, Inc.
4. Respondent is subject to the regulations and requirements promulgated pursuant to Section 402, and set forth at 40 C.F.R. Part 745, Subpart L.
5. On March 7, 2012, duly designated representatives of EPA conducted an inspection of Respondent's abatement activities at 612 Onderdonk Avenue, Apt. 1L, Ridgewood, Queens, NY 11385 pursuant to § 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the Inspection").
6. The 612 Onderdonk Avenue property, constructed in 1930, is "target housing" as that term is defined at § 401 of TSCA, 15 U.S.C. § 2681, and 40 C.F.R. § 745.103.
7. Respondent is, and at all times relevant to this Complaint was, the "firm" contracted to conduct an "abatement," as those terms are defined in 40 C.F.R § 745.83 and § 745.223, of the property located at 612 Onderdonk Avenue, Apt. 1L, Ridgewood, Queens, NY 11385.
8. On or about March 7, 2012, the Respondent conducted an abatement at 612 Onderdonk Avenue, Apt. 1L, Ridgewood, Queens, NY 11385.

COUNT 1

Failure of a firm to notify EPA prior to conducting abatement activities

9. Paragraphs 1 through 8 are realleged and incorporated as if fully set forth herein.
10. Under 40 C.F.R. § 745.227(e)(4) after March 1, 2000, firms that perform abatements must be certified by EPA and must notify EPA prior to conducting lead-based paint abatement activities. 40 C.F.R. § 745.227(e)(4)(vi) specifies information that must be included in the notice.
11. Firms which are certified by EPA receive by mail, along with the certificate, a “Firm Notice” document explaining the obligation of a firm to give notice to EPA prior to commencing an abatement.
12. In addition to its original certification, Respondent has renewed its certification twice and therefore received the “Firm Notice” document on three separate occasions.
13. On January 27, 2012, Respondent filed a “Notification of Commencement of Lead Abatement/Remediation” with the New York City Department of Health and Mental Hygiene for the property located at 612 Onderdonk Avenue, Apt. 1L, Ridgewood, Queens, NY 11385.
14. For the abatement conducted on or about March 7, 2012, at 612 Onderdonk Avenue, Apt. 1L, Ridgewood, Queens, NY 11385, Respondent did not notify EPA prior to conducting lead-based paint abatement activities.
15. During the time when the abatement described in paragraph 14 above was being conducted, at least one child under the age of 18 was living on the premises.
16. Failure to make prior notification to EPA is a violation of 40 C.F.R. § 745.227(e)(4).
17. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.227(e)(4) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689 for which Respondent is liable pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with section 16 of TSCA, which authorizes the assessment of a civil penalty in the maximum amount of \$37,500 for each violation of TSCA § 409. (73 Fed. Reg. 75340-46, December 11, 2008, increased the maximum penalty to \$37,500 per day.) See also 40 C.F.R. Part 19.

For purposes of determining the amount of any penalty to be assessed, § 16 requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged. As to the violator, § 16 requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree of culpability, as well as such other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's “Guidelines for Assessment of Civil Penalties Under § 16 of the Toxic

Substances Control Act,” which was published on September 10, 1980, in the Federal Register (45 Fed. Reg. 59,770), and 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 Interim Final Policy.” These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases. Copies of these documents are available on request, or can be found on the web at <http://cfpub.epa.gov/compliance/resources/policies/civil/tsca/>.

Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes, subject to receipt and evaluation of further relevant information that Respondent be assessed the following civil penalties for the violation alleged in this Complaint:

COUNT 1: Failure to notify EPA prior to conducting abatement activities
Circumstance Level: 3a
Total number of violations: 1
Extent Category: Significant (age of youngest resident unknown)

Penalty Per Violation: Significant \$ 15,300

1 Significant violation X \$ 15,300 = \$ 15,300

Total Proposed Penalty Assessment for this Count: \$ 15,300

TOTAL PROPOSED PENALTY **\$ 15,300**

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, “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,” and are now codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Stuart N. Keith
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
(212) 637-3217

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2).

In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: JANUARY 8, 2015



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2

In the Matter of Precision Consulting, Inc.
Docket No. TSCA-02-2015-9275

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number TSCA-02-2015-9275, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Wayne Gladney
Owner and/or Officer
Precision Consulting, Inc.
208-76 Grand Central Parkway, Suite #2A
Queens, NY 11427

I carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: 1/20/2015

Wayne Gladney