

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

<b>In the Matter of:</b>	:	<b>Docket No.</b>
	:	<b>TSCA-03-2023-0034</b>
	:	
<b>Robert Lauter d/b/a Prime Cut Paint,</b>	:	<b>DECLARATION OF CRAIG YUSSEN</b>
	:	
<b>Respondent.</b>	:	
	:	
	:	
	:	

**DECLARATION OF CRAIG YUSSEN**

I, CRAIG YUSSEN, declare and state as follows:

1. The statements made in this declaration are based on my personal knowledge gained through my education and professional experience in the fields of environmental compliance and enforcement inspections. These statements reflect the knowledge I have gained from conducting compliance inspections and reviewing documents specifically related to this case.
2. I am currently employed as a Chemical Engineer, credentialed Inspector, and Compliance Officer with the Enforcement and Compliance Assurance Division in the United States Environmental Protection Agency (“EPA”) Region 3 office located at Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA. I have held this position since August 1990. I currently work in the Toxics Section of the Enforcement and Compliance Assurance Division. My duties have included case development for the Toxic Substances Control Act (“TSCA”) and the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). In addition, my responsibilities have included inspections,

case development, and enforcement coordination of Section 313 of the “Emergency Planning and Community Right-to-Know Act (“EPCRA”).

3. As a Chemical Engineer and credentialed Inspector with the Enforcement and Compliance Assurance Division, my duties include investigative work to determine compliance with EPA’s Residential Property Renovations regulations at 40 C.F.R. Part 745, Subpart E Renovations (“RRP Rule”); and the Disclosure of Known Lead -Based Paint and/or Lead Based Paint Hazards Upon Sale or Lease of Residential Property regulations at 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”). I have also served as the regional team leader for the Section 313 of the Emergency Planning and Community Right-to-Know Act enforcement program, 42 U.S.C. § 11023 (“EPCRA Section 313”), for approximately 30 years. As a Compliance Officer, my duties include calculating penalties in administrative cases for violations of the RRP Rule, Disclosure Rule, and EPCRA Section 313.
4. I was awarded a B.S. degree in Chemical Engineering from Drexel University in 1987 and a M.S. degree in Chemical Engineering from the Ohio State University in 1988.
5. I have been performing case development in the TSCA Lead enforcement program for the last 12 years. During that time, I have developed approximately 80 TSCA Lead enforcement cases.
6. I have read and am familiar with the Complaint in this case.
7. I have reviewed and am familiar with documents submitted as proposed exhibits with Complainant’s Initial Prehearing Exchange, Complainant’s Rebuttal Prehearing Exchange, and this Supplemental Briefing.

## **FACTUAL SUPPORT FOR ALLEGATIONS AGAINST RESPONDENT**

8. I first became involved with this matter as the assigned case manager in late 2019.
9. I reviewed Inspector Paul Ruge's initial draft inspection report on October 21, 2019. At that time, I was serving as Lead enforcement program coordinator while Annie Hoyt, the primary Lead enforcement coordinator for Region 3, was on maternity leave.
10. I was first assigned to the case on or around November 4, 2019. On or around that time, I reviewed the final inspection report.
11. After reviewing the final inspection report and other relevant evidence, I concluded that the Respondent had committed multiple TSCA and RRP Rule violations. Based on that review, EPA Region 3 management determined an administrative enforcement action was warranted.
12. On November 8, 2019, I received an email from the Respondent confirming receipt of the Inspection Report from Paul Ruge.

## **CALCULATION OF THE APPROPRIATE PENALTY IN THE MATTER**

13. Since I concluded that there was sufficient evidence to support violations of the RRP Rule, I next completed a Compliance Analysis and Penalty Calculation Memorandum.
14. To calculate the appropriate penalty in this case, I relied on the *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (Aug. 2010) (RRP ERPP), the *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (Dec. 2007) (Disclosure Rule ERPP), the Amendments to the EPA's Civil Penalty Policies to Account for Inflation and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (Jan 11, 2018) (2018 Inflation Memo).

15. In accordance with the RRP ERPP, to calculate an appropriate penalty, I first determined how many independently assessable violations there were based on the administrative record. For the purposes of this penalty discussion, I will address only those six (6) violations associated with the Broad Street Property for which the Respondent was found liable by Judge Biro's Default Order (See November 28, 2023 Default Order, p. 13-14).<sup>1</sup>
16. Next, I determined whether the Respondent realized any economic benefit from its violations.
17. Here, I determined that the costs were relatively small and amounted to approximately \$600 based on the avoided costs of Respondent obtaining firm and renovator certifications.
18. Due to the low cost of obtaining RRP firm and renovator certifications, I determined Respondent did not realize significant economic benefit from its violations of the RRP Rule.
19. Then I proceeded to calculate the gravity-based penalty. The gravity-based penalty was determined by considering the circumstance and extent levels of each violation.
20. For circumstance levels and nature of the violations, I looked to Appendix A of the RRP ERPP, which lists out each specific violation and its respective circumstance levels and nature. The circumstance level of each violation assesses the likelihood or probability of harm resulting from a particular type of violation. The nature of each violation assesses their essential character and distinguishes those that are "chemical control" in nature,

---

<sup>1</sup> Please note that Complainant's exhibits supporting the initial penalty calculation make reference to alleged violations at the additional properties identified through Inspector Paul Ruge's records inspection. None of those alleged violations will be considered in this declaration based on Judge Biro's Default Order.

assigned as “a” violations, from those that are “hazard assessment” in nature, assigned as “b” violations.

21. For extent levels, I looked to Appendix B of the RRP ERPP, which describes the three different extent levels—Major, Significant, and Minor. The extent level of the violation represents the degree, range, or scope of a violation’s potential for harm.
22. After determining the circumstance and extent levels, I looked to Appendix B of the RRP ERPP to determine the appropriate penalty for each violation. For violation 3, involving the failure to distribute the pamphlet, and violation 5, involving the failure to post the appropriate signage, I also consulted the Disclosure Rule ERPP for the reasons outlined in the supplemental briefing and as I will explain in greater detail below.
23. At the time I began my penalty calculations on or around November 2019, the 2018 Inflation Memo was the most recently published Inflation Memo. The 2020 Inflation Memo was not published until the next calendar year. I relied upon the 2018 Inflation Memo for penalty calculations under the RRP ERPP as well as the Disclosure Rule ERPP.
24. The 2018 Inflation Memo provided a list of inflation multipliers that, when multiplied by the gravity-based penalty, calculated the proper inflation adjusted gravity-based penalty to assess violations. Violations 1, 2, 4, & 6 utilized the RRP ERPP inflation adjustment factor of 1.03711 (See CX 64, p. 13). Violations 3 & 5 utilized the Disclosure Rule ERPP inflation adjustment factor of 1.58136 (See CX 64, p. 14).
25. According to the information collected by the inspector, at least one child between the ages of 6 and 18 resided at the 114 S. Broad Street property (See November 28 2023 Default Order, P.9). Thus, the violations associated with the Broad Street property were

assessed a significant extent level apart from the first violation for performing a renovation without a firm certification.

26. The firm certification violation was assessed a Minor extent level (See November 28, 2023 Default Order, p. 17-18).

27. The first violation, for failure to renovate without firm certification, was assessed a minor extent level in accordance with Footnote 49 of the RRP ERPP. Footnote 49 provides in relevant part: “For a self-employed renovator or very small firm (<4 employees), the “Extent” category is usually “minor” for “offering to perform” renovations.” (See CX 63, p.32).

28. Given that the Respondent in this matter was a self-employed renovator who indicated that his firm did not have any other fulltime employees (See CX 3, p. 3), I assessed a minor extent level.

29. Therefore, for the first violation, failure to renovate without firm certification, the circumstance level/nature was assessed as 3a minor extent in accordance with Appendix A of the RRP ERPP. After determining the circumstance/nature and extent level, I looked to Appendix B to determine the appropriate penalty for the violation. According to Appendix B of the RRP ERPP, the appropriate penalty for violation 1 was \$4,667 after factoring in the 2018 inflation adjustment multiplier for RRP ERPP violations.

30. For violation 2, renovating without a certified renovator assigned to each renovation, the circumstance/nature level was a 3a in accordance with Appendix A of the RRP ERPP. The extent level for violation 2 was significant because there was a child between the ages of 6 and 18 residing at the property. According to Appendix B of the RRP ERPP,

the appropriate penalty for violation 2 was \$15,868 after factoring in the 2018 inflation adjustment multiplier for RRP ERPP violations.

31. For violation 3, failure to distribute to property owners a copy of EPA's "The Lead-Safe Certified Guide to Renovate Right," the circumstance/nature level was a 1b in accordance with Appendix A of the RRP ERPP. The extent level for violation 3 was significant because there was a child between the ages of 6 and 18 residing at the property.
32. I classified violation 3 (a circumstance/nature level 1b significant extent violation under RRP ERPP Appendix A) as a circumstance level 1 significant extent violation pursuant to the Disclosure Rule ERPP (See Disclosure Rule ERPP, p. 30).
33. According to Appendix B of the Disclosure Rule ERPP, the appropriate penalty was \$12,240 after factoring in the 2018 inflation adjustment multiplier for Disclosure Rule ERPP violations.
34. For violation 4, failure to make available to EPA all records necessary to demonstrate that the renovator performed all of the lead-safe work practices described in 40 C.F.R. § 745.85(a), as well as the post-renovation cleaning procedures described in 40 C.F.R. § 745.85(b), the circumstance/nature level was 6a in accordance with Appendix A of the RRP ERPP. The extent level for violation 4 was significant because there was a child between the ages of 6 and 18 residing at the property. According to Appendix B of the RRP ERPP, the appropriate penalty for violation 4 was \$2,116 after factoring in the 2018 inflation adjustment multiplier for RRP ERPP violations.
35. For violation 5, 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, the circumstance/nature level was a 1b in accordance with Appendix A of

the RRP ERPP. The extent level for violation 5 was significant because there was a child between the ages of 6 and 18 residing at the property.

36. I classified violation 5 (a circumstance/nature level 1b significant extent violation under RRP ERPP Appendix A) as a circumstance level 1 significant extent violation pursuant to the Disclosure Rule ERPP (See Disclosure Rule ERPP, p. 30).

37. According to Appendix B of the Disclosure Rule ERPP, the appropriate penalty was \$12,240 after factoring in the 2018 inflation adjustment multiplier for Disclosure Rule ERPP violations.

38. For violation 6, failure by the firm, before beginning the renovation, to cover the ground with plastic sheeting or other impermeable material in the work area extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the falling debris, the circumstance/nature level was 2a in accordance with Appendix A of the RRP ERPP. The extent level for violation 6 was significant because there was a child between the ages of 6 and 18 residing at the property. According to Appendix B of the RRP ERPP, the appropriate penalty for violation 6 was \$21,157 after factoring in the 2018 inflation adjustment multiplier for RRP ERPP violations.

39. Based on this information, I determined that the total initial inflation adjusted penalty was \$68,288 after adding up the penalty amounts for the 6 independently assessable violations.

40. The RRP ERPP then instructed me to consider specific factors to determine whether any adjustments to the gravity-based penalty are warranted.



41. First, I considered Respondent's ability to pay a civil penalty. Section 16(a)(2)(B) of TSCA required me to take into account a Respondent's ability to pay and effect on ability to continue to do business when determining an appropriate civil penalty.
42. I followed the RRP ERPP as well as EPA's June 2015 *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action* (ATP Guidance) when considering Respondent's ability to pay (See CX 63 & 65).
43. The RRP ERPP provides that without proof to the contrary, a Respondent's ability to pay may be established with circumstantial evidence relating to a company's size and annual revenue. Circumstantial evidence could include publicly available information, such as Dun & Bradstreet reports, as well as information obtained directly from the Respondent.
44. Here, there was a lack of publicly available information or information provided by the Respondent that made evaluating Respondent's ability to pay difficult.
45. Respondent operates as a sole proprietorship, and the relevant Dun and Bradstreet Report I reviewed contained little information on the financial status of the company. I attempted to search and skim for more public financial information and reports using additional screening mechanisms without success.
46. Next, I consulted Paul Ruge's inspection report, inspection notes, and any additional financial information provided by the Respondent. I found only one sentence within these materials directly addressing Respondent's financials: "Mr. Lauter stated that his company was founded in December 2012, has an annual revenue of \$23,600, and has one employee, himself." (See CX 3, p. 3).
47. Although this amount could suggest a possible ability to pay issue, I was unable to corroborate this information anywhere else. Due to Respondent's hostile manner

throughout his dealings with EPA personnel, I never received any financial statements, tax returns, or any of the other financial documents outlined in either the RRP ERPP or EPA's 2015 *ATP Guidance* to determine Respondent was unable to pay.

48. Additionally, Respondent never raised the ability to pay issue despite multiple opportunities in the form of follow-up letters, emails, and phone calls from EPA.
49. Therefore, I determined that an adjustment to the gravity-based penalty was not warranted based on Respondent's ability to pay a civil penalty.
50. The second factor I considered under the RRP ERPP was Respondent's history of prior violations.
51. As Respondent has not been cited for violations of TSCA nor the RRP Rule for the past five years, I determined that an upward adjustment to the gravity-based penalty for prior violations of the RRP Rule was not warranted based on this factor.
52. The third factor I considered under the RRP ERPP was Respondent's degree of culpability.
53. The RRP ERPP allowed me to increase or decrease a gravity-based penalty, up to 25%, based on Respondent's culpability.
54. I determined there was no reason to seek such a penalty increase for this factor.
55. The fourth factor I considered under the RRP ERPP was Respondent's attitude.
56. The RRP ERP allows me to reduce the gravity-based penalty by up to 30% for Respondent's attitude.
57. The 30% figure is broken up into 10% increments for Respondent's cooperation in responding to the compliance evaluation and enforcement process; good-faith efforts to come into compliance; and early settlement.

58. First, Respondent has not cooperated during the compliance evaluation and enforcement process. Second, Respondent still has not made any good faith efforts to come into compliance by applying for either firm or individual renovator certification. Finally, Respondent never agreed to early settlement.

59. After consideration of the facts and circumstances surrounding this case, I decided that an adjustment based on Respondent's attitude was not warranted.

60. Finally, the RRP ERPP allowed me to reduce the gravity-based penalty up to an additional 25% based on other factors as justice may require.

61. This factor allowed me to consider anything that I believe warrants such consideration, but which has not yet been considered during the penalty calculation process, or of which the RRP ERPP has not yet taken into account.

62. After consideration of all the facts and circumstances surrounding this case, I determined that there were no other factors present that would warrant an additional reduction in the gravity based penalty.

63. I did not find that any adjustment factors warranted an adjustment in the gravity-based penalty. Therefore, the inflation-adjusted gravity-based penalty of \$68,288 is equal to the total penalty.

64. After careful consideration of all relevant facts and circumstances surrounding this case, and after considering the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue in business, and any history of prior such violations, the degree of culpability, and such other matters as justice may require, I believe that \$68,288 is a fair and appropriate penalty to assess against this Respondent based on its 6 TSCA Lead RRP Violations.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 22, 2023.

Respectfully submitted,

---

Craig Yussen

EPA Region 3, Enforcement  
and Compliance Monitoring  
Division