

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the matter of:</b>	:	<b>U.S. EPA Docket No.</b>
<b>Mr. Robert Lauter d/b/a Prime Cut Paint</b>	:	<b>TSCA-03-2023-0034</b>
1414 Baychester Ave.	:	Proceeding Under Section 16(a) of the
Norfolk, VA 23503	:	Toxic Substances Control Act
<b>Respondent</b>	:	15 U.S.C. § 2615(a).
	:	
	:	

**ADMINISTRATIVE COMPLAINT & NOTICE OF OPPORTUNITY FOR HEARING**

**I. INTRODUCTION**

1. This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, (“EPA” or the “Agency”) by Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and 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. The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in the U.S. EPA Region III to the Director of the Enforcement and Compliance Assurance Division (“Complainant”).
2. The Respondent in this action is Mr. Robert Lauter d/b/a Prime Cut Paint (“Respondent”). This Complaint alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* in connection with renovations conducted at the

following properties: 1) 114 S. Broad St. Suffolk, VA 23434; 2) 238 Mt. Vernon Ave. Portsmouth, VA 23707; 3) 3716 Northmoor Ct. Virginia Beach, VA 23452; and 4) 3403 Broadway St. Portsmouth, VA 23703 (collectively referred to herein as the “Renovation Properties”).

3. Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with a provision of Section 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, or with any rule issued thereunder.
4. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.

## **II. JURISDICTION, BACKGROUND AND DEFINITIONS**

5. EPA has jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, and 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.
6. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), Pub. L. 102–550, title X, Oct. 28, 1992, 106 Stat. 3897. The RLBPHRA addresses the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations.
7. EPA promulgated 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) under the authority of TSCA *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63 Fed. Reg. 29919), April 22,

2008 (73 Fed. Reg. 21758), March 20, 2009 (74 Fed. Reg. 11869), May 6, 2010 (75 Fed. Reg. 24818), and August 5, 2011 (76 Fed. Reg. 47938).

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, except as described in 40 C.F.R. §§ 745.82(a) and (b).
9. Pursuant to 40 C.F.R. § 745.83, the term “person” means 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.
10. Pursuant to 40 C.F.R. § 745.83, the term “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.
11. Pursuant to 40 C.F.R. § 745.83, the term “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. The term renovation does not include minor repair and maintenance activities.
12. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition 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 surfaces.

13. Pursuant to 40 C.F.R § 745.83, the term “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 an EPA-authorized State or Tribal program.
14. Pursuant to 40 C.F.R. § 745.103 and Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

### **III. GENERAL ALLEGATIONS**

15. Respondent, Robert Lauter, is an individual who performs painting and paint removal contracting services registered to do business in the Commonwealth of Virginia under the trade name Prime Cut Paint.
16. At all times relevant to the violations alleged in this Complaint, Mr. Robert Lauter was the sole proprietor of Prime Cut Paint.
17. At all times relevant to the violations alleged in this Complaint, Respondent had a principal place of business located at 1414 Baychester Avenue Norfolk, VA 23503.
18. At all times relevant to the violations alleged in this Complaint, Respondent performed activities for compensation, which constitute a “renovation” as the term is defined under 40 C.F.R. § 745.83 at the renovation properties.
19. At all times relevant to the violations alleged in this complaint, Respondent was a “person” as the term is defined under 40 C.F.R. § 745.83.
20. At all times relevant to the violations alleged in this complaint, Prime Cut Paint was a “firm” as the term is defined under 40 C.F.R. § 745.83.

21. Between September of 2018 and July of 2019, Respondent entered into a series of contracts with the owners of the four renovation properties identified in paragraph 2 above for the purpose of renovating target housing for compensation.
22. On August 22, 2019, EPA received a tip from Mr. Daniel Gillis, a co-owner of the 114 S. Broad Street property, concerning the renovation being performed by Respondent at 114 S. Broad Street.
23. Respondent entered into a contract to perform a renovation for compensation at 114 S. Broad Street renovation property on July 20, 2019. The renovation included pressure washing of the exterior and scraping of loose paint.
24. At the time of the renovation, Mr. Gillis resided at the residence with his wife and special needs child who was 8 years old.
25. The 114 S. Broad Street property was originally built in 1906. The renovation performed by Respondent at the property was a “renovation performed for compensation at target housing” as described in 40 C.F.R. § 745.82.
26. In his tip, Mr. Gillis stated that Respondent had refused to show him the appropriate EPA firm and renovator certificates upon his request. Mr. Gillis also stated that Respondent failed to take proper precautions in containing the renovation debris and had refused to clean up the renovation site. Mr. Gillis also attached photographic evidence showing renovation debris on the ground adjacent to the property.
27. On September 4, 2019, the duly authorized EPA inspector conducted an on-site inspection at the 114 S. Broad Street renovation property to observe ongoing renovation activities and Respondent’s level of compliance with the RRP Rule’s work practice standards (“Site Inspection”).

28. The property owner allowed the duly authorized EPA inspector access to the site.
29. During the onsite inspection at the 114 S. Broad Street renovation property, the duly authorized EPA inspector observed the following: (1) paint chips from the scraping on the ground all around the foundation of the house; (2) areas where the paint had been sanded to the point that the wood siding was exposed; and (3) that certain areas had been painted over with a white primer paint, including some areas where the painted surface had not been scraped at all and the paint was peeling underneath the primer.
30. The duly authorized EPA Inspector documented these observations with photographic evidence of the disturbed exterior paint from the renovation activities.
31. The duly authorized EPA inspector did not observe any signage warning persons not involved in the renovation to remain outside the work area at the 114 S. Broad Street renovation property as required by 40 C.F.R. § 745.85(a)(1).
32. The duly authorized EPA inspector did not observe any plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation as required under 40 C.F.R. § 745.85(a)(2)(ii)(c) at the 114 S. Broad Street renovation property.
33. The renovation performed at the 114 S. Broad Street renovation property was not a “minor repair and maintenance activit[y]” as that term is defined by 40 C.F.R. § 745.83.
34. On September 5, 2019, the duly authorized EPA inspector conducted a records inspection at the office of Respondent, located at 1414 Baychester Avenue Norfolk, VA 23503, to determine Respondent’s compliance with the RRP Rule.
35. During the September 5, 2019, inspection, the duly authorized EPA inspector identified and collected four renovation contracts for further review, including 114 S. Broad Street Suffolk,

VA 23434, 238 Mt. Vernon Ave. Portsmouth, VA 23707, 3716 Northmoor Ct. Virginia Beach, VA 23452, and 3403 Broadway Street Portsmouth, VA 23703.

36. Upon information collected during the Records inspection, the four Renovation Properties identified were all constructed prior to 1978.
37. At all times relevant to this Complaint, the four renovation properties identified were “target housing” as such term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.
38. During the records inspection, Mr. Lauter stated that he was familiar with the RRP Rule, that Prime Cut Paint was not an EPA-certified firm, and that Prime Cut Paint did not employ a certified renovator.
39. Respondent entered into a contract with the property owner of 3403 Broadway St. Portsmouth, VA 23703 on September 12, 2018 to perform a “renovation” as such term is defined by 40 C.F.R. § 745.83. The renovation took place on or around that same time.
40. The 3403 Broadway Street property was originally built in 1955. The renovation performed by Respondent at the property was a “renovation performed for compensation at target housing” as described in 40 C.F.R. § 745.82.
41. Respondent entered into a contract with the property owner of 3716 Northmoor Ct. Virginia Beach, VA 23452 on April 19, 2019 to perform a “renovation” as such term is defined by 40 C.F.R. § 745.83. The renovation took place on or around that same time.
42. The 3716 Northmoor Ct. property was originally built in 1976. The renovation performed by Respondent at the property was a “renovation performed for compensation at target housing” as described in 40 C.F.R. § 745.82.

43. Respondent entered into a contract with the property owner of 238 Mt. Vernon Ave. Portsmouth, VA 23707 on June 10, 2019 to perform a “renovation” as such term is defined by 40 C.F.R. § 745.83. The renovation took place on or around that same time.
44. The 238 Mt. Vernon Ave. property was originally built in 1910. The renovation performed by Respondent at the property was a “renovation performed for compensation at target housing” as described in 40 C.F.R. § 745.82.
45. None of the exceptions described in 40 C.F.R. §§ 745.82(a) or (b) apply to the Renovation Properties.

#### **IV. VIOLATIONS**

##### **Count I: Renovating without Firm Certification**

46. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
47. Pursuant to 40 C.F.R. §745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89, in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.
48. As of the September 5, 2019, onsite inspection at 114 S. Broad Street, the September 12, 2018 3403 Broadway Street renovation, the April 19, 2019 3716 Northmoor Ct. renovation, and the June 10, 2019 238 Mt. Vernon Ave. renovation, neither Prime Cut Paint nor Respondent was EPA certified under 40 C.F.R. § 745.89 prior to performing renovations at the target housing and none of the exceptions described in 40 C.F.R. §§ 745.82(a) or (b) applied.
49. Respondent’s failure to have a firm certification from EPA under 40 C.F.R. § 745.89(b), prior



to and while performing renovations for compensation at the Renovation Properties constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89, and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Counts II-V: Renovating without a Certified Renovator Assigned to each Renovation**

50. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
51. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations “must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.”
52. According to Respondent, neither Respondent nor Prime Cut Paint employed any certified renovators during the applicable renovations for compensation at the Renovation Properties.
53. Respondent’s failure to have certified renovators assigned to the renovations performed at the Renovation Properties as required by 40 C.F.R. § 745.89(d)(2) constitutes four violations of 40 C.F.R. § 745.89(d)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Counts VI-IX: Failure to Distribute to Property Owners a Copy of EPA’s “The Lead-Safe Certified Guide to Renovate Right” Pamphlet (“Renovate Right Pamphlet”)**

54. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
55. Pursuant to 40 C.F.R. § 745.84(a)(1), the firm performing a renovation must provide to the owner of the target housing a copy of the Renovate Right Pamphlet “No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing[.]”
56. To fully comply with 40 C.F.R. § 745.84(a)(1), the firm performing the renovation must also either 1) obtain written acknowledgement that the owner received the Renovate Right

Pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)(i); or 2) “obtain a certificate of mailing at least 7 days prior to the renovation” pursuant to 40 C.F.R. § 745.84(a)(ii).

57. At the time of the renovations for compensation performed between September 2018 and September 2019, upon EPA’s information and belief, Respondent had not provided to the owners of the target housing for the Renovation Properties a Renovate Right Pamphlet and also did not obtain a written acknowledgement of receipt from the owners of the Renovation Properties that they received the pamphlet nor have certificates of mailing at least 7 days prior to the renovations at the Renovation Properties.

58. Respondent’s failure to distribute to the property owners a copy of EPA’s Renovate Right pamphlet at the Renovation Properties and failure to have written acknowledgements of receipt from the owners (or certificates of mailing) that they received the pamphlet under 40 C.F.R § 745.84(a) constitute four violations of 40 C.F.R § 745.84(a)(1), and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Counts X-XIII – Failure to Make Available All Records Demonstrating the Performance of All Lead-Safe Work Practices**

59. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.

60. Pursuant to 40 C.F.R. § 745.86(b)(6), firms performing renovations on target housing are required 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) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b).

61. For each of the four renovations at the Renovation Properties, Respondent failed to make available to EPA all records demonstrating the performance of all lead-safe practices

described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b).

62. 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) at the Renovation Properties and that the renovator performed the post-renovation cleaning described in 40 C.F.R. § 745.85(b) at the Renovation Properties constitutes four violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count XIV– Failure to Post Signs Clearly Defining Work Area and Warning Persons Not Involved in the Renovation to Remain Outside the Work Area**

63. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
64. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations are performed in accordance with the work practice standards of 40 C.F.R. § 745.85.
65. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must 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.
66. On or around September 4, 2019, Respondent failed to post signs warning occupants or other persons not involved in renovation activities to remain outside the work area at the 114 S. Broad Street renovation property.
67. Failing to post signs on or around September 4, 2019 clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area is a violation of 40 C.F.R. § 745.85(a)(1), 40 C.F.R. § 745.89(d)(3) and Section 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Count XV – Failure to Cover the Ground with Plastic Sheeting or Other Impermeable Material Extending 10 Feet Beyond the Perimeter of Surfaces Undergoing Renovation**

68. The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference.
69. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations are performed in accordance with the work practice standards of 40 C.F.R. § 745.85.
70. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), the firm performing a renovation must “cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering” before beginning the renovation.
71. At the time of EPA’s onsite inspection on September 5, 2019 while Respondent was conducting a renovation for compensation, Respondent did not cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris at the 114 S. Broad Street job site.
72. Failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C), 40 C.F.R. § 745.89(d)(3), and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

## V. PROPOSED CIVIL PENALTY

73. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA, 15 U.S.C. §§ 2614 or 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occur on or after November 2, 2015, are subject to penalties up to \$43,611 per day per violation.
74. For purposes of determining the amount of any civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to consider a number of factors, including the penalty criteria (“statutory factors”) including the following: the nature, circumstances, extent, and gravity of the violation or violations alleged 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 such other matters as justice may require. In developing a proposed penalty, Complainant must take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16(a)(2)(B) of TSCA and EPA’s *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“LBP Consolidated ERP”), and the applicable *Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* issued on September 20, 2019, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

75. Calculated pursuant to the statutory factors above, EPA proposes to assess a civil penalty of one-hundred seventeen thousand two hundred and forty dollars (**\$117,250**) against the Respondent for the fifteen (15) violations alleged in Counts I through XV.

76. Appendix A to this Complaint sets out how EPA calculated a penalty for each of the violations alleged in Counts I through X and the Appendix is incorporated by reference into this Complaint.

77. EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on their businesses. The burden of raising and demonstrating an inability to pay rests with Respondents. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

78. EPA's penalty policies represent an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

## VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

79. Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, via email (preferred) or via mail within thirty (30) days of receipt of this Complaint, with:

Bevin Esposito  
Regional Hearing Clerk  
U.S. EPA, Region III  
Philadelphia, PA 19103  
R3\_Hearing\_Clerk@epa.gov  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2029

80. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

***81. If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion***

*for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.*

82. Any hearing requested and granted will be held conducted in accordance with the provisions of the *Consolidated Rules of Practice*.

83. A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent via email (preferred) or via mail to, Patrick Foley, the attorney assigned to represent Complainant in this case:

Attention: Patrick Foley  
U.S. EPA Region III  
Philadelphia, PA 19103.  
R3\_ORC\_mailbox@epa.gov  
Four Penn Center  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2029

#### **VII. SETTLEMENT CONFERENCE**

84. Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve Respondent of their responsibility to file a timely Answer to the Complaint.

85. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent



Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

86. If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Patrick Foley at R3\_ORC\_mailbox@epa.gov prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

### **VIII. QUICK RESOLUTION**

87. In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules of Practice*, no Answer need be filed.

88. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the *Consolidated Rules of Practice*, Respondent may file a written statement with the Regional Hearing Clerk by email (preferred) or mail within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk at the email or mail address stated in Paragraph 79 and

a copy shall be provided to Mr. Foley at the email or mail address stated in Paragraph 83.

Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.

89. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice*, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

90. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, TSCA-03-2023-0034.
- b. All checks shall be made payable to the "United States Treasury"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see: <https://www.epa.gov/financial/makepayment>
- e. A copy of Respondent's check or other documentation of payment of the penalty

using the method selected by Respondent for payment shall be sent simultaneously by email to:

Patrick Foley  
Assistant Regional Counsel  
R3\_ORC\_mailbox@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk  
R3\_Hearing\_Clerk@epa.gov

91. Each payment shall also reference the above case caption and docket number (Docket No. TSCA-03-2023-0034).

**IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS**

92. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Director of Enforcement and Compliance Assurance Division (ECAD) and the Region III Chief of the Air, RCRA & Toxics Branch of ECAD. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the *Consolidated Rules of Practice* prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law

Judge, or any person likely to advise these officials in the decision of the case, after the  
Complaint is issued.

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*[digitally signed and dated]*  
Karen Melvin, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region III  
Complainant