

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

In the Matter of:)	Docket No.: TSCA-03-2023-0034
)	
Robert Lauter d/b/a Prime Cut Paint,)	COMPLAINANT’S INITIAL
)	PREHEARING EXCHANGE
Respondent)	

COMPLAINANT’S INITIAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R. § 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”) and in response to Chief Administrative Law Judge Susan L. Biro’s January 19, 2023 Prehearing Order (“Prehearing Order”), Complainant, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”) Region III, hereby sets forth its Initial Prehearing Exchange. Complainant respectfully reserves its right to supplement this Initial Prehearing Exchange in accordance with 40 C.F.R. § 22.19(f).

I. WITNESSES

At this time, Complainant expects to call as witnesses the following individuals, whose testimony is expected to include, but may not be limited to, the matters described generally below. Complainant reserves the right to revise and supplement the matters to which each witness identified below may testify. Complainant anticipates that it may be appropriate to present the testimony of certain witnesses in written or affidavit form. Consequently, Complainant reserves the right to seek leave of the Court to present in written or affidavit form, all or part of the testimony of some of the witnesses described below. In addition, Complainant anticipates that the parties will be able to stipulate that many of the exhibits are what they purport to be. In the event that parties are unable to so stipulate, Complainant reserves the right to present the testimony of the appropriate records custodians or other witnesses, live or in written form, for the sole purposes of establishing that certain documents are what they purport to be.

1. Mr. Paul Ruge (3LC41)
Environmental Protection Agency, Region III
Senior Environmental Employee Lead Inspector, Toxic Programs Branch
Land & Chemical Division
Environmental Science Center
701 Mapes Road
Fort Meade, MD

Mr. Ruge will testify as both a fact and expert witness. Mr. Ruge is a Senior Environmental Employee (“SEE”), Lead Inspector for the Center for Workforce Inclusion. He has worked as a grantee/subcontractor on behalf of EPA since 2012. As a participant in the SEE Program, Mr. Ruge assists EPA by performing inspections under the EPA Lead-Based Paint Renovation, Repair and Painting Rule (“Lead RRP”) program. Mr. Ruge is duly authorized by EPA to conduct inspections, collect samples, and to secure information and records in connection with EPA programs under the Toxic Substances Control Act (“TSCA”). In this role, Mr. Ruge routinely carries out TSCA lead-based paint inspections and works closely with the Toxic Programs Branch on establishing administrative records for subsequent enforcement actions.

Mr. Ruge will testify as to his training and credentials as an inspector by EPA. He will testify as to his work experience with EPA, and in conducting Inspections for possible violations of TSCA, 40 C.F.R. Part 745, Subpart E (“RRP Rule”), including taking photographs of work sites, taking witness statements, and writing inspection reports.

Mr. Ruge was the Lead Inspector for the September 4, 2019 onsite inspection of the property renovated by Respondent at 114 South Broad Street Suffolk, VA 23434 (“114 South Broad Street”). As such, Mr. Ruge will testify about his correspondence with Daniel Gillis and Gina Gillis concerning the renovation activities performed by Mr. Robert Lauter d/b/a Prime Cut Paint (“Respondent”) on their home at 114 South Broad Street, preparation for the onsite inspection on the afternoon of September 4, 2019, observations and documentation of renovation activities performed by Respondent at 114 South Broad Street during the inspection, and his overall investigation of Respondent’s activities at 114 South Broad Street.

Mr. Ruge was also the Lead Inspector for the Records Inspection with Respondent at 1414 Baychester Avenue Norfolk, VA 23503 on September 5, 2019. As such, Mr. Ruge will testify about his initial review of Respondent’s case file, his conversations with Respondent before, during, and after the September 5, 2019 records inspection, his observations made while conducting the Records Inspection, documentation of records pertaining to renovation activities performed by Respondent at Target Housing, and his overall investigation of Respondent. Further, based on his expertise in TSCA Lead RRP inspections, Mr. Ruge will be able to offer his opinion on this case and its importance in upholding the TSCA regulatory scheme.

2. Mr. Craig Yussen
Chemical Engineer, Toxic Programs Branch
Enforcement & Compliance Assurance Division
Environmental Protection Agency, Region III
1600 JFK Boulevard
Philadelphia, PA 19103-2852

Mr. Yussen will testify as both a fact and expert witness. Mr. Yussen is currently a Chemical Engineer in the Toxic Programs Branch, Enforcement & Compliance Assurance Division, within EPA Region III’s Philadelphia Office. Mr. Yussen started with EPA in 1990

and has over 30 years of experience working on case development and Lead enforcement matters. As part of his various roles and responsibilities in the Enforcement and Compliance Assurance Division, he provides technical assistance to regional case teams on TSCA Lead RRP matters.

Mr. Yussen will testify as to his review of the evidence compiled as a result of EPA's inspection of Respondent's renovation activities, including assessments of the Inspection Report, Inspector photographs of the onsite inspection, and the factual basis for his determination that Respondent is in violation of TSCA and the regulations promulgated thereunder. He will also testify as to how the penalty proposed in the referenced Complaint was calculated applying the statutory penalty factors set forth within Section 16(a)(2)(B) of TSCA, 15 U.S.C. §2615(a)(2)(B), as explained in 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" ("LBP Consolidated ERPP"). He will offer his opinion regarding the appropriateness of the penalty proposed in the Complaint considering the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent: a) its ability to pay, b) the effect on its 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.

Based on his 30 years of experience and expertise in TSCA, Mr. Yussen will testify as to how appropriate penalties are calculated in TSCA lead-based paint cases as well as why such penalties are necessary. Mr. Yussen will be able to offer his opinion on this case, how the penalty was calculated for the case, the importance in upholding the TSCA regulatory scheme, and the appropriateness of the penalty.

3. Mr. Daniel Gillis
Homeowner
114 South Broad Street
Suffolk, VA 23434

Mr. Daniel Gillis is the current owner of the 114 South Broad Street property where SEE Inspector Paul Ruge conducted the September 4, 2019 onsite inspection into Respondent's renovation activities. He is married to Mrs. Gina Gillis and resides at the property with their son. They were also the owners at the time of the renovation and contracted with Mr. Lauter for the renovation that was the subject of the onsite inspection. Daniel and Gina's son has autism and was 8 years old at the time of the renovation performed by Respondent. Their son also tested positive for elevated blood lead levels in the months following the renovation of their home. Mr. Gillis filed the initial tip concerning the renovation activities performed by Respondent.

Mr. Gillis will testify as to the documentation he provided to EPA concerning the renovation performed by Respondent at 114 South Broad Street, his conversations with Respondent before, during, and after the renovation, and his firsthand observations of the renovation activities performed by Respondent at 114 South Broad Street.

4. Mrs. Gina Gillis
Homeowner
114 South Broad Street
Suffolk, VA 23434

Mrs. Gina Gillis is the current owner of the 114 South Broad Street property where SEE Inspector Paul Ruge conducted the September 4, 2019 onsite inspection into Respondent’s renovation activities. She is married to Mr. Daniel Gillis and resides at the property with their son. They were the owners at the time of the renovation and contracted with Mr. Lauter for the renovation that was the subject of the Mr. Ruge’s onsite inspection. Daniel and Gina’s son has autism and was 8 years old at the time of the renovation performed by Respondent. Their son also tested positive for elevated blood lead levels in the months following the renovation of their home. Mrs. Gillis documented much of the work performed by Respondent and engaged in correspondence with SEE Inspector Paul Ruge concerning the alleged Lead RRP violations observed during the renovation of their home.

Mrs. Gillis will testify as to her firsthand observations of the renovation activities performed by Respondent at 114 South Broad Street, documentation of renovation activities performed by Respondent, her conversations with Respondent before, during, and after the renovation, her correspondence with SEE Inspector Paul ruge concerning Respondent’s renovation activities, and the elevated blood levels observed in her son following Respondent’s renovation activities at their home.

II. EXHIBITS

Complainant intends to introduce the following exhibits at hearing, copies of which are attached hereto:

Exhibit Number	Description of Exhibit
CX 1	Curriculum Vitae (CV) of Mr. Paul Ruge
CX 2	Curriculum Vitae (CV) of Mr. Craig Yussen
CX 3	Prime Cut Paint Inspection Report
CX 4	Prime Cut Paint Inspection Photograph Log Sheet
CX 5	Inspection Photograph 1
CX 6	Inspection Photograph 2
CX 7	Inspection Photograph 3
CX 8	Inspection Photograph 4
CX 9	Inspection Photograph 5

CX 10	Inspection Photograph 6
CX 11	Inspection Photograph 7
CX 12	Inspection Photograph 8
CX 13	Inspection Photograph 9
CX 14	Inspection Photograph 10
CX 15	Inspection Photograph 11
CX 16	Inspection Photograph 12
CX 17	Inspection Photograph 13
CX 18	Inspection Photograph 14
CX 19	Inspection Photograph 15
CX 20	Inspection Photograph 16
CX 21	Inspection Photograph 17
CX 22	Inspection Photograph 18
CX 23	Inspection Photograph 19
CX 24	Inspection Photograph 20
CX 25	Inspection Photograph 21
CX 26	Inspection Photograph 22
CX 27	Inspection Photograph 23
CX 28	Inspection Photograph 24
CX 29	Inspection Photograph 25
CX 30	Inspection Photograph 26
CX 31	Inspection Photograph 27
CX 32	Inspection Photograph 28
CX 33	Inspection Photograph 29
CX 34	Paul Ruge Inspector Proof of Credential
CX 35	Federal Lead- Based Paint Program Database (Lack of Individual Certification)
CX 36	Federal Lead- Based Paint Program Database (Lack of Firm Certification)

CX 37	Contract & Work Detail Agreement for 114 S. Broad Street Suffolk, VA 23434
CX 38	Work Detail Agreement for 238 Mt. Vernon Ave. Portsmouth, VA 23707
CX 39	Work Detail Agreement for 3716 Northmoor Ct. Virginia Beach, VA 23452
CX 40	Work Detail Agreement for 3403 Broadway St. Portsmouth, VA 23703
CX 41	Property Detail Report for 114 S. Broad Street Suffolk, VA 23434
CX 42	Property Detail Report for 238 Mt. Vernon Ave. Portsmouth, VA 23707
CX 43	Property Detail Report for 3716 Northmoor Ct. Virginia Beach, VA 23452
CX 44	Property Detail Report for 3403 Broadway St. Portsmouth, VA 23703
CX 45	Inspection Notification Letter (Prime Cut 1414 Baychester Avenue Office)
CX 46	Respondent's Correspondence with Paul Ruge Affirming 1414 Baychester Avenue as Site for Records Inspection
CX 47	Notice of Inspection & Consent for Access To Worksite (114 South Broad Street)
CX 48	Paul Ruge's Inspection Notes
CX 49	Declaration Letter of Daniel Gillis
CX 50	Gillis Photographs # 1-3
CX 51	Gillis Photographs # 4-7
CX 52	Gillis Photograph #8
CX 53	Paul Ruge Letter in Response to Daniel Gillis' Tip
CX 54	Gina Gillis' Correspondence with Paul Ruge Concerning Scraping & Power-washing by Respondent
CX 55	Gina Gillis Correspondence with Paul Ruge Concerning Child's Elevated Blood Levels
CX 56	Gillis Lab Visit for Child's Elevated Capillary Lead Levels*
CX 57	Gina Gillis Correspondence with Respondent 7.10.19 through 8.20.19
CX 58	Respondent's Email to Gina Gillis Acknowledging Distribution of the Incorrect Lead Pamphlet
CX 59	The "Lead Hazard" Pamphlet Distributed by Respondent to the Renovation Properties

CX 60	EPA’s “Renovate Right” Pamphlet. Available online at https://www.epa.gov/sites/default/files/2020-09/documents/renovaterightbrochurecolor.pdf
CX 61	Prime Cut Paint Penalty Calculation Worksheet
CX 62	Dun & Bradstreet Report Prime Cut Paint
CX 63	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). Available online at: https://www.epa.gov/sites/default/files/2020-06/documents/revise dlbp consolidated erpp.pdf
CX 64	2018 Penalty Policy Inflation Memo and 2018 Penalty Inflation Rule (Jan. 2018) (2018 Inflation Memo). Available online at: https://thefederalregister.org/83-FR/1190
CX 65	Guidance on Evaluating a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Action (June 2015) (ATP Guidance). Available online at: https://www.epa.gov/sites/default/files/2015-06/documents/atp-penalty-evaluate-2015.pdf
CX 66	Proof of Service of the Administrative Complaint & Receipt
CX 67	Respondent’s Initial Response to the Complaint
CX 68	Respondent’s Revised Answer to the Complaint
CX 69	EPA Delegation of Authority 12-2A. Administrative Enforcement: Issuance of Complaints and Signing of Consent Agreements.
CX 70	15 U.S.C.A. § 2681. Definitions. Available online at: https://www.law.cornell.edu/uscode/text/15/2681
CX 71	40 CFR Part 745- Lead-Based Paint Poisoning Prevention in Certain Residential Structures Subpart E- Residential Property Renovations. 40 C.F.R. § 745.83. Available online at: https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745/subpart-E
CX 72	<i>Consolidated Rules of Practice</i> , 40 C.F.R. Part 22.

*** Personal Identifiable Information concerning medical records has been redacted from these documents.**

Note: At hearing, Complainant may present enlargements of one or more of these exhibits in the nature of demonstrative aids.

Upon adequate notice to Respondent, Complainant reserves the right to introduce: a) exhibits included by Respondent in its Prehearing Exchange, b) additional exhibits to rebut evidence presented by Respondent, and c) such other exhibits as otherwise may become necessary.

III. TIME NEEDED FOR HEARING AND TRANSLATION SERVICE NEEDS

At this time, Counsel for Complainant estimates that the time needed to present Complainant's case in chief will require one (1) full day. Complainant does not anticipate that translation services will be necessary with regards to the testimony of any of its witnesses.

IV. SERVICE OF THE COMPLAINT

A copy of the "proof of service" showing that service of the Complaint was completed pursuant to Section 22.5(b)(1) of the Consolidated Rules of Practice is being filed as an attachment hereto (CX 66).

V. BRIEF NARRATIVE STATEMENT EXPLAINING THE FACTUAL AND/OR LEGAL BASES FOR THE ALLEGATIONS DENIED OR OTHERWISE NOT ADMITTED IN RESPONDENT'S ANSWER

Denials Concerning Jurisdiction and General Background in the Complaint

In paragraphs 1, 2, 5, 77, & 79 of its Answer, Respondent denies that jurisdiction is proper and states his belief that the proper court for these legal proceedings is the U.S. Federal District Court for the Eastern District of Virginia or otherwise makes reference to a trial by a jury of his peers. Paragraph 1 of the Complaint provides a clear jurisdictional statement of the basis for the Complaint. The Complaint for this matter is issued pursuant to the authority vested in the EPA Administrator by Sections 16(a) and 409 of the TSCA, 15 U.S.C. §§ 2615(a). The EPA Administrator has delegated the authority to issue TSCA complaints to the EPA Regional Administrators (CX 69). This authority has been further delegated in U.S. EPA Region III to the Director of the Enforcement and Compliance Assurance Division. The Complaint was signed by the Director of the Enforcement and Compliance Assurance Division for EPA Region III because she was delegated this authority from the EPA Administrator.

The Administrative Complaint conforms to the requirements for the content of a Complaint under the *Consolidated Rules of Practice*. A copy of the Consolidated Rules was provided with the original Complaint to respondent and is also provided herein (CX 72). This Administrative Court has jurisdiction over the above captioned matter.

In paragraph 2 of its Answer, Respondent denies a summary provided of the alleged violations that EPA plans to establish in the Complaint (The jurisdictional issues alleged by Respondent in this paragraph were addressed in the response above). Paragraph 2 of the Complaint informs Respondent of the statute and regulations Complainant alleges it has violated. The applicable statutes, regulations, and violations are described in detail in the Complaint as a whole. This paragraph is intended solely as a short synopsis of the violations that Complainant

will allege throughout the Complaint. This paragraph alone does not claim to establish that these violations took place as Respondent indicates in his answer. Complainant will establish that all 15 of the alleged violations took place through the testimony of witnesses and introduction of the exhibit list provided in Section II herein. Complainant will address those denials of specific violations raised by Respondent in due course where they are alleged in the Complaint.

In paragraphs 3, 4, & 6 of its Answer, Respondent denies these statements on the basis that the burden of proof is on EPA to establish liability for a civil penalty and that the analysis of Congressional intent is conclusory. These Statutory and Regulatory Background paragraphs make no allegations with respect to the Respondent. The referenced statutes speak for themselves and are merely a summary of the law. Any denials concerning the merits or deficiencies of the complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraphs 8, 25, & 45 of its Answer, Respondent denies statements of a requirement in the RRP Rule by alleging that the property at 114 South Broad Street was not Target Housing since a portion of that home was renovated after 1978. Respondent's Answer seems to suggest he believes applicable exceptions described in 40 C.F.R. §§ 745.82(a) or (b) apply to 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 (the "Renovation Properties.") Respondent's summary of the applicability of the exceptions to "Target Housing" under the RRP Rule is inaccurate and his assertion that 114 South Broad Street falls under an applicable exception in all three circumstances is without merit.

The RRP Rule "applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

- (1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor...that the components affected by the renovation are free of paint or other surface coatings that contain lead...
 - (2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit...has tested each component affected by the renovation and determined that the components are free of paint or another surface coatings that contain lead...
 - (3) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA...has determined that the samples are free of paint or other surface coatings that contain lead..."
- 40 C.F.R. § 745.82(a)(1)-(3) (See CX 71).

Respondent has not provided sufficient information to establish that any of the exceptions outlined above apply to 114 South Broad Street or any of the other properties alleged in the Complaint. The burden falls on Respondent to submit sufficient evidence to establish that an exception in 40 C.F.R. § 745.82(a)(1)-(3) or (b) applied. Therefore, based on 40 C.F.R. § 22.15(d), and the fact that any information relevant to the exceptions in 40 C.F.R. § 745.82(a)

could only be in Respondent's control, Complainant reads this as an admission that none of the exceptions in 40 C.F.R. § 745.82(a) apply. To the extent Respondent's denials on this question may have any merit, EPA is prepared to introduce the following evidence to establish the Renovation Properties in the case, including 114 South Broad Street, were "Target Housing": CX 3, CX 4, CX 37-40, CX 41-44, CX 49, CX 55, CX 57, CX 58, as well as the Testimony of Paul Ruge and Craig Yussen.

Paragraphs 9 & 10 were admitted by Respondent.

In Paragraphs 11 & 13 of its Answer, to the extent that Respondent intended to deny the definitions provided within the Complaint on the stated grounds, these paragraphs provide regulatory background information only and make no allegations with respect to the Respondent. The referenced regulatory definitions speak for themselves and are merely a restatement of the law (See CX 71). Any denials concerning the merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

Paragraph 12 was admitted by the Respondent.

In paragraph 14 of its Answer, Respondent denies the definition of "Target Housing" provided in the Complaint. The definition provided in the Complaint is taken directly from Section 401(17) of TSCA, 15 U.S.C. § 2681(17) without comment or editorialization by Complainant. The full definition of "Target Housing" is provided herein: "Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date." (See CX 70). Please see response to Paragraphs 8, 25, & 45 above for the evidence Respondent plans to use to establish that the Renovation Properties at issue in this case are Target Housing and do not fall under an applicable exception.

Denials Concerning General Allegations in the Complaint

In paragraph 15 of its Answer, Respondent denies that Robert Lauter offers as a term of service "paint removal." However, Respondent does not specifically deny that he performs painting and conducts business in the Commonwealth of Virginia under the trade name Prime Cut Paint. Based on 40 C.F.R. § 22.15(d), Complainant reads this as an admission that Respondent performs painting and conducts business in the Commonwealth of Virginia. However, to the extent Respondent meant to deny these terms Complainant will establish these allegations and that Respondent performed renovation activities, including "paint removal" through the introduction of the following evidence: CX 3, CX 4, CX 5-33, CX 37-40, CX 48, CX 49, CX 50-58, CX 62, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Paragraph 16 was admitted by the Respondent.

In paragraph 17 of its Answer, Respondent denies that its principal place of business is located at 1414 Baychester Avenue Norfolk, VA 23505. EPA Inspector Paul Ruge conducted the

Records Inspection at 1414 Baychester Avenue which is also Respondent's home address. Respondent confirmed this as the location for the Records Inspection with Mr. Paul Ruge. EPA is unaware of any alternative office location associated with Prime Cut Paint and all correspondence dating back to the commencement of the investigation in 2019 has been addressed to 1414 Baychester Avenue. Complainant is prepared to establish that 1414 Baychester Avenue Norfolk, VA 23505 has been Respondent's Principal Place of Business through the introduction of the following evidence: CX 3, CX 37, CX 45, CX 46, CX 62, CX 66, as well as the testimony of Paul Ruge and Craig Yussen.

In paragraph 18 of its Answer, Respondent denies that it performed activities for compensation, which constitute a "renovation," as that term is defined under 40 C.F.R. § 745.83 at the Renovation Properties. However, in paragraph 18 of its Answer, Respondent states he "received no 'compensation' until I pressed the matter in court. The deposit money tendered was used for materials they maintained possession of." Complainant reads this as an admission that Respondent performed activities for compensation. For purposes of the RRP rule, "compensation includes pay for work performed, such as that paid to contractors and subcontractors; wages, such as those paid to employees of contractors, building owners, property management companies, child-occupied facility operators, State and local government agencies, and non-profits; and rent for target housing or public or commercial building space." (See CX 71). To the extent that Respondent intended this response as a denial, Complainant will establish that Respondent performed activities for compensation, which constituted a "renovation," as that term is defined under 40 C.F.R. § 745.83 at the renovation properties using the following evidence: CX 3, CX 4, CX 5-33, CX 37-40, CX 47-60, CX 62, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Paragraph 19 was admitted by the Respondent.

In paragraph 20 of its Answer, Respondent denies that Prime Cut Paint was a "firm" as the term is defined under 40 C.F.R. § 745.83 by stating that "sole proprietors by definition are not firms." Respondent's denial is an inaccurate statement of the law. 40 C.F.R. § 745.83 defines a 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" [emphasis added]. Complainant will establish Respondent is a firm under this regulatory definition through the introduction of the following evidence: CX 3, CX 35-36, CX 46, CX 62, CX 71.

In paragraph 21 of its Answer, Respondent denies that the four properties were "renovation properties," but does not address the allegation that Respondent entered into a series of contracts with the owners of the Renovation Properties for the purpose of renovating target housing for compensation between September of 2018 and July of 2019. Based on 40 C.F.R. § 22.15(d), Complainant reads this as an admission that Respondent entered into contracts with the owners of the four Renovation Properties for purposes of renovating target housing. However, to the extent that Respondent intended this to indicate a denial, Complainant will establish that the four properties were "renovation properties" and that Respondent entered into contracts with the owners of the four properties for purposes of renovating target housing for compensation

between September of 2018 and July of 2019 using the following evidence: CX 3, CX 4, CX 5-33, CX 37-40, CX 41-44, CX 47-60, CX 62, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Paragraph 22 was admitted by the Respondent.

In paragraph 23 of its Answer, Respondent indicates that the scope of work at 114 South Broad Street on July 20, 2019 included pressure washing of the exterior and scraping of loose paint, but fails to make any mention of whether Respondent entered into a contract to perform a renovation for compensation at 114 S. Broad St. on July 20, 2019. Based on 40 C.F.R. § 22.15(d), Complainant reads this as an admission that Respondent entered into a contract to perform a renovation for compensation at 114 S. Broad St. on July 20, 2019. However, to the extent that Respondent intended this to indicate a denial, Complainant will establish that the renovation included pressure washing of the exterior and scraping of loose paint greater than 20 square feet on the exterior of the property and that Respondent entered into a contract to perform a renovation for compensation at 114 S. Broad Street on July 20, 2019 using the following evidence: CX 3, CX 4, CX 5-33, CX 37, CX 47-60, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis

In paragraph 24 of its Answer, Respondent denies based on a lack of knowledge or information sufficient to form a belief as to the truth of the violations that an 8-year-old special needs child resided at 114 S. Broad Street on July 20, 2019. Complainant will establish that an 8-year-old special needs child resided at 114 S. Broad Street on July 20, 2019 using the following evidence: CX 49, CX 55, CX 56, as well as the testimony of Daniel Gillis and Gina Gillis.

Paragraph 25 of the Respondent's Answer was already addressed earlier in the section where Complainant addressed Respondent's claims that the Renovation Properties may fall under an applicable exception to Target Housing.

In paragraph 26 of its Answer, Respondent denies that Mr. Gillis stated in his tip that Respondent refused to show appropriate EPA firm and renovator certificates upon his request. Respondent denies Mr. Gillis stated that Respondent failed to take proper precautions in containing the renovation debris and had refused to clean up the renovation site. Respondent also denies that Mr. Gillis attached photographic evidence showing renovation debris on the ground adjacent to the property. The only basis for denial Respondent provided was that the Mr. Daniel Gillis & Gina Gillis were referred to the terms of service of the agreement. First, Complainant will establish the content of Mr. Gillis' Declaration as CX 49. Complainant will further establish that Respondent clearly performed renovation activities at 114 South Broad Street despite any disclaimer he may have originally included in the contract. Complainant will introduce the following evidence to establish the nature of the renovation activities performed by Respondent at 114 South Broad Street: CX 3, CX 4, CX 5-33, CX 37, CX 47-60, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis

In paragraphs 27, 28, 29, 30, 31, 32, 33, & 62 of its Answer, Respondent denies that SEE Lead Inspector Paul Ruge was employed by the EPA and duly authorized to conduct an on-site inspection. Respondent denies that a proper inspection occurred because the "EPA Inspector" is a

sub-contractor not employed by this administration.” Complainant will establish that the Inspector in this case, Mr. Paul Ruge, is a SEE Lead Inspector for the Center for Workforce Inclusion. As a participant in the SEE Program, Mr. Ruge is duly authorized by EPA to conduct inspections, collect samples, and to secure information and records in connection with EPA programs under the TSCA. Mr. Ruge’s status as a subcontractor/grantee has no bearing on the investigation as he is authorized to conduct inspections and has over 10 years of experience doing so on behalf of EPA. Moreover, Mr. Ruge is widely considered an expert in TSCA Lead RRP inspections in Region III. Complainant will establish this using the following evidence: CX 1, CX 3, CX4, CX 5-33, CX 34, CX 35-36, CX 45, CX 46, CX 47, as well as the testimony of Paul Ruge & Craig Yussen.

In paragraphs 29, 30, 31, 32, & 33 of its Answer, Respondent denies that the photographic evidence of disturbed exterior paint from renovation activities, lack of signage at the 114 S. Broad Street property, and lack of impermeable cover at the 114 S. Broad Street property observed by the EPA Inspector at the 114 S. Broad Street property were a result of Respondent’s activities. Respondent argues that he had quit the property weeks before the EPA Investigator made his observations at the 114 S. Broad Street property. Further, Respondent denies that the activities performed by him constituted a renovation at all.

The TSCA Lead RRP provides the following definition for a Renovation: “*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 this part (40 CFR 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” (Exhibit 71).

Scraping Paint and power-washing are clearly defined renovation activities under this definition. 40 CFR 745.83. Complainant will establish that Respondent performed the renovation described in the Complaint and performed renovation activities as that term is defined above using the following evidence: CX 3, CX 4, CX 5-33, CX 37-40, CX 47-60, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

In paragraphs 34 & 35 of its Answer, Respondent denies that the EPA inspector conducted a records inspection on the grounds that Respondent voluntarily submitted information to the EPA Inspector. Complainant reads this as an admission that a Records Inspection took place with Respondent on September 5, 2019 at 1414 Baychester Avenue. The exchange of records and documents is a routine part of a Records Inspection. In so far as Respondent intended to deny that there was a Records Inspection, Complainant will establish the Records Inspection took place through the following evidence: CX 3, CX 46, as well as the testimony of Paul Ruge.

In paragraphs 36 and 37 of its Answer, Respondent denies that the four Renovation Properties were all constructed before 1978 and are 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. Complainant will establish that all four renovation properties were constructed before 1978 and are “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 by using the following evidence: CX 3, CX 41-44, CX 48, as well as the testimony of Paul Ruge and Craig Yussen.

In paragraph 38 of its Answer, Respondent denies he stated any of the following during the Records Inspection: 1) that he was familiar with the RRP Rule; 2) that Prime Cut Paint was not an EPA-certified firm; and 3) that Prime Cut Paint did not employ a certified renovator. These topics are routinely addressed during a TSCA LEAD RRP Records Inspection as a matter of course so it is inevitable these topics are addressed as SEE Inspector Paul Ruge will testify. Regardless of whether or not Respondent stated so at the time of the inspection, the record is clear that Prime Cut Paint was not a certified firm and that Mr. Lauter was not a certified renovator. He never provided proof of either certification to Daniel or Gina Gillis despite their requests. EPA conducted a search query via the Federal Lead-based Paint Program database and the results showed that Robert Lauter d/b/a Prime Cut Paint lacks both individual and firm certification. Over three years after the initial inspection took place, neither Prime Cut Paint nor Mr. Lauter have been certified. Complainant will establish that Respondent was not an EPA-certified firm and that Prime Cut Paint did not employ a certified renovator by using the following evidence: CX 3, CX 35, CX 36, CX 37-40, as well as the testimony of Paul Ruge

In paragraphs 39, 40, 41, 42, 43, & 44 of its Answer, Respondent denies that it performed a “renovation” as that term is defined in 40 C.F.R. § 745.83 because the scope of the work agreement only included re-painting for the properties at 3403 Broadway St. Portsmouth, VA 23703; 3716 Northmoor Ct. Virginia Beach, VA 23452; and 238 Mt. Vernon Ave. Portsmouth, VA 23707. Respondent fails to specifically deny that: 3403 Broadway St. Property was originally built in 1955, that the 3716 Northmoor Ct. property was originally built in 1976, and that the 238 Mt. Vernon Ave. property was originally built in 1910. Based on 40 C.F.R. § 22.15(d), Complainant reads this as an admission that the properties were built on these dates. To the extent that Respondent meant to deny these allegations with regards to the renovation activities performed, Complainant will establish that Respondent entered into a series of contracts with each of the property owners to perform a “renovation” as that term is defined in 40 C.F.R. § 745.83: CX 3, CX 37-40, CX 41-44, CX 48, as well as the testimony of Paul Ruge & Craig Yussen.

Paragraph 45 of the Respondent’s Answer was addressed earlier in this section.

Denials Concerning Alleged Violations in the Complaint

Count I

In Count I, Complainant alleges that Prime Cut Paint failed 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, as required by 40 C.F.R. § 745.81(a)(2)(ii) and 40

C.F.R. § 745.89. The Record is clear that Prime Cut Paint was not a certified firm and that Prime Cut Paint did not produce proof of firm certification despite requests from Daniel & Gina Gillis at or around the time of the Renovation at 114 South Broad Street (CX 57). Further, Respondent did not provide proof of firm certification when requested during the Records Inspection conducted by Paul Ruge and a subsequent search of the Federal Lead-Based Point Program database showed that Prime Cut Paint was not a certified firm (CX 3, CX 36).

In paragraph 46 of its Answer, Respondent denies the statement “The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference” on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraph 47 of its Answer, Respondent denies a summary of 40 C.F.R. §745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii) as conclusory and states that “nowhere in my contract do I offer renovations.” This paragraph is a statement of the legal requirement Respondent failed to meet as alleged in Count I. 40 C.F.R. § 745.81(a)(2)(ii) provides 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(a) or (c).” 40 C.F.R. §745.89(a) states “Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling” (See CX 71). The referenced regulatory language speaks for itself.

In paragraphs 48 & 49 of its Answer, Respondent admits that it was not certified under 40 C.F.R. § 745.89 prior to performing renovations at the Target Housing. However, Respondent argues that it does not offer or perform renovations and thus denies that it was subject to the requirement. Complainant will establish that the Respondent performed “renovations” as that term is defined in 40 C.F.R. § 745.83 and that Respondent did so without firm certification using the following evidence: CX 3, CX 4, CX 5-33, CX 36, CX 37-40, CX 47-60, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Counts II-V

In Counts II-V, Complainant alleges that Prime Cut Paint failed to have certified renovators assigned to the renovations performed at the four Renovation Properties as required by 40 C.F.R. § 745.89(d)(2). The Record is again clear that Mr. Lauter was not a certified renovator when he performed renovation activities at 114 South Broad Street or any of the other Renovation Properties (CX 3, CX 35). Mr. Lauter failed to provide proof of his renovator certification despite requests from Daniel & Gina Gillis at or around the time of the Renovation at 114 South Broad Street (CX 57). Further, Respondent did not provide proof of renovator certification when requested during the Records Inspection conducted by Paul Ruge and a

subsequent search of the Federal Lead-Based Point Program database showed that Mr. Robert Lauter was not a certified renovator (CX 3, CX 35).

In paragraph 50 of its Answer, Respondent denies the statement “The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference” on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraph 51 of its Answer, Respondent again denies a summary of regulation 40 C.F.R. § 745.89(d)(2) by stating that “I do not have to employ or become a renovator because I am not a renovator.” 40 C.F.R. § 745.89(d)(2) states “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.” (See CX 71) Complainant did not allege anything about the Respondent in paragraph 51 of its Complaint, but simply quoted the regulations. The referenced regulatory language speaks for itself.

In paragraphs 52 & 53 of its Answer, Respondent denies that it failed to employ any certified renovators during the renovations because the allegations are conclusory and immaterial. Complainant will establish that Respondent needed to employ certified renovators because the renovations were “renovations” as the term is defined under 40 C.F.R. § 745.83 and that Robert Lauter d/b/a Prime Cut Paint did not employ any certified renovators during the applicable renovations for compensation at the Renovation Properties by using the following evidence: CX 3, CX 4, CX 5-33, CX 35, CX 36, CX 37-40, CX 47-60, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Counts VI-IX

In Counts VI-IX, Complainant alleges that Prime Cut Paint failed to distribute to the property owners a copy of EPA’s “The Lead-Safe Certified Guide to Renovate Right” (“Renovate Right pamphlet”) at the four Renovation Properties and failed 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). The contracts and records obtained by EPA show that Respondent failed to distribute to the property owners of the Four Renovation Properties a copy of EPA’s Renovate Right pamphlet (CX 3, CX 37-40, CX 58, CX 59, CX 60, CX 67). Respondent may have distributed a document concerning lead paint hazards, but he did not distribute the correct pamphlet at any of the Renovation Properties (Compare CX 59 versus CX 60). By his own words, Respondent refers to and acknowledges the name of the incorrect pamphlet he distributed both in communications with Mrs. Gillis and in his filings with this Court (CX 58, CX 67).

In paragraph 54 of its Answer, Respondent denies the statement “The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference” on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraphs 55, 56, 57 & 58 of its Answer, Respondent contested the alleged violations on the grounds that he distributed to the Homeowners of the Four Renovation Properties a copy of an EPA Lead safety pamphlet and that the information conveyed to the homeowners was sufficient. First, to the extent that Respondent intended to deny the information provided within paragraphs 55 & 56 on the stated grounds, these paragraphs provide regulatory background information only and make no allegations with respect to the Respondent. As to Respondent’s denial on the basis that he did distribute to the Four Renovation Properties a copy of the appropriate information along with the contracts, the evidence collected by EPA clearly demonstrates that Respondent did not distribute the correct pamphlet at any of the Renovation Properties (CX 3, CX 37-40, CX 58, CX 59, CX 60, CX 67).

Respondent failed to distribute to the Renovation Property owners a copy of EPA’s Renovate Right pamphlet and failed to obtain written acknowledgements of receipt from the owners (or certificates of mailing) that they received the pamphlet under 40 C.F.R § 745.84(a). Even if Respondent did distribute some information relevant to lead paint hazards, he did not distribute the pamphlet required under the regulations (See Exhibit 71). Complainant will use the following evidence to establish that Respondent did not distribute a copy of EPA’s Renovate Right pamphlet at any of the Renovation Properties: CX 3, CX 37-40, CX 58, CX 59, CX 60, CX 67, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Counts X-XIII

In Counts X-XIII, Complainant alleges that Prime Cut Paint failed 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.

In paragraph 59 of its Answer, Respondent denies the statement “The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference” on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraphs 60, 61, & 62 of its Answer, Respondent denies its failure 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) on the basis that Respondent has catalogues of paperwork which were provided to SEE Lead Inspector Paul Ruge. 40 C.F.R. § 745.85(a) describes the appropriate work practice standards for renovation activities: “Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).” 40 C.F.R. § 745.85(a) (See CX 71).

Paragraph 60 of the Complaint provides regulatory background on the lead-safe work practices standards described in 40 C.F.R. § 745.85(a) which includes requirements for occupant protection and containment of the work area 40 C.F.R. § 745.85(a)(1)-(2) (See Exhibit 71). Paragraph 60 also provides for the post-renovation cleaning required by Respondent described in 40 C.F.R. § 745.85(b)(2). The requirements for an Exterior Renovation such as what took place at 114 South Broad Street are described in 40 C.F.R. § 745.85(b)(2): “A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs” 40 C.F.R. § 745.85(b)(2) (See CX 71).

While Respondent may have handed over copies of some contracts and records relating to renovations, that alone is not sufficient to demonstrate Respondent complied with 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). As the photographs of 114 South Broad Street following Respondent’s renovation activities makes clear, there was a tremendous of paint chips and debris left by Respondent at the worksite (CX 3, CX 4, CX 5-33, CX 49, CX 50-53). Moreover, nowhere in Respondent’s records was there sufficient documentation to demonstrate compliance with 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. From the outset, Respondent failed to obtain both firm and renovator certifications prior to performing any of the renovation activities at the Four Renovation Properties despite the requirement that “Renovations must be performed by certified firms using certified renovators as directed in § 745.89” 40 C.F.R. § 745.85(a) (CX 35, CX 36, CX 71).

Complainant will use the following evidence to establish that 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): CX 3, CX 4, CX 5-33, CX 35, CX 36, CX 37-40, CX 47-57, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

Count XIV

In Count XIV, Complainant alleges that Prime Cut Paint failed 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 as required by 40 C.F.R. § 745.85(a)(1) at the 114 South Broad Street renovation. Firms performing renovations must ensure that the renovation is performed in accordance with the work practice standards of 40 C.F.R. § 745.85. According 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. Respondent did not post such signage defining the work area and failed to warn occupants and other persons not involved in the renovation activities to remain outside the work. While Respondent was not working actively on the site at the time of the inspection, records relating to the inspection, Daniel Gillis' tip, and firsthand accounts make clear that Respondent did not comply with the work practice standards and failed to post the appropriate signage. Complainant will establish that Respondent did not post the appropriate signage clearly defining the work area and warning persons not involved in the renovation activities to remain outside of the work area through the following evidence: CX 3, CX 4, CX 5-33, CX 48-57, CX 67, as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis.

In paragraph 63 of its Answer, Respondent denies the statement "The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference" on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraphs 64, 65, 66, & 67 of its Answer, Respondent denies that it 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 because the regulation only applies to renovators and Respondent had left the premises weeks before the photos were taken. As mentioned in prior paragraphs, Complainant will establish that Respondent was performing renovations on Target Housing through the following evidence: CX 3, CX 4, CX 5-33, CX 48-57, CX 67, as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis.

Further, Complainant will establish that Respondent did not post the appropriate signage clearly defining the work area and warning persons not involved in the renovation activities to remain outside of the work area through the following evidence: CX 3, CX 4, CX 5-33, CX 48-57, CX 67, as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis. as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis.

Count XV

In Count XV, Complainant alleges that Prime Cut Paint failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation as required by 40 C.F.R § 745.85(a)(2)(ii)(C) at the 114 South Broad Street renovation. Firms performing renovations must ensure that the renovation is

performed in accordance with the work practice standards of 40 C.F.R. § 745.85. According 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...” While Respondent was not working actively on the site at the time of the inspection, records relating to the inspection, Daniel Gillis’ tip, and firsthand accounts make clear that Respondent did not comply with the work practice standards and failed to cover the ground with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation. Complainant will establish that Respondent did not cover the ground with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation through the following evidence: CX 3, CX 4, CX 5-33, CX 48-57, CX 67, as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis.

In paragraph 68 of its Answer, Respondent denies the statement “The information and allegations in the preceding paragraphs of this Complaint are incorporated herein by reference” on the grounds that it is conclusory. The referenced language is a legal term of art that is included to avoid a restatement of all the preceding paragraphs in a Complaint that contain facts and information relevant to the violations. This language in and of itself contains no new facts or allegations with respect to the Respondent that have not already been addressed in the preceding paragraphs. Any denials by Respondent concerning merits or deficiencies of the Complaint will be addressed in the paragraphs where those issues are alleged in the Complaint.

In paragraphs 69 & 70 of its answer, Respondent again denied the allegations on the basis that the cited regulation only applies to renovators. Complainant will establish that Respondent was performing renovations on Target Housing through the following evidence: CX 3, CX 4, CX 5-33, CX 37-40, CX 47-60, CX 62, CX 68, CX 71, as well as the testimony of Paul Ruge, Craig Yussen, Daniel Gillis, and Gina Gillis.

In paragraphs 71 & 72 of its Answer, Respondent denies that it failed to cover the ground at the 114 South Broad Street property because Respondent was not conducting any renovations by the time SEE Lead Inspector Paul Ruge conducted EPA’s onsite inspection. Complainant will establish that Respondent failed to cover the ground at 114 S. Broad Street with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation as required by 40 C.F.R § 745.85(a)(2)(ii)(C) using the following evidence: CX 3, CX 4, CX 5-33, CX 48, CX 49, CX 50-53, CX 53, CX 54, CX 57, CX 67, as well as the testimony of Paul Ruge, Daniel Gillis, and Gina Gillis.

Denials Concerning Proposed Civil Penalty Section of Complaint

Respondent’s denials in its Answer to paragraphs 73 & 75 have been stricken from the record. Per Judge Biro’s last order filed February 27, 2023, “[T]erms of settlement should never be presented to the presiding Administrative Law Judge, and the specific settlement offer disclosed by Respondent in his answer has been stricken from the record.”

In paragraphs 74, 76, & 78 of Respondent’s Answer, Respondent denied several paragraphs in the complaint describing the basis for determining the civil penalty on the grounds

that the analysis was conclusory & immaterial. The language challenged by Respondent here is an explanation of how EPA determines a penalty calculation for TSCA Lead RRP matters. A comprehensive discussion of how the penalty was calculated for this specific case is included in the Prehearing Exchange below (Section VI Information and Documentation Relevant to Penalty).

Paragraph 79 of the Respondent's Answer was addressed earlier in this section.

VI. INFORMATION AND DOCUMENTATION RELEVANT TO PENALTY

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty. Complainant used the factors set out in Section 16 of TSCA, 15 U.S.C. § 2615, along with the LBP Consolidated ERPP adjusted consistent with the 2018 Inflation Memo, and the ATP Guidance to determine the civil monetary penalty (See CX 61, CX 63, CX 64, CX 65). In this matter, Mr. Craig Yussen of EPA Region III made the penalty determinations for the Complaint in accordance with the appropriate guidance mentioned herein. A detailed explanation of Mr. Yussen's penalty calculations is given below:

1. Determining the Appropriate Penalty

According to the LBP Consolidated ERPP, Complainant first determines the number of independently assessable violations and whether Respondent realized any economic benefit from its noncompliance. Complainant then calculates a gravity-based penalty by considering the nature, circumstances, and extent of the violations (CX 63). Then, after applying the appropriate inflation adjustment, Complainant determines whether any gravity-based penalty adjustments are appropriate (CX 63, CX 64). The calculation of an appropriate penalty can be visually represented based on the following formula:

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity} \pm \text{Gravity Adjustment Factors} - \text{Litigation Considerations} - \text{Ability to Pay} - \text{Supplemental Environmental Projects}$$

A. Independently Assessable Violations

Each requirement of the RRP Rule is a separate and distinct requirement and the failure to comply with any such requirement is an independently assessable violation (CX 63). Here, Respondent failed to comply with at least 15 independently assessable requirements of the RRP Rule. Therefore, Complainant has determined that there is sufficient evidence to support the assessment of 15 separate violations.¹

B. Economic Benefit Component

¹ For the purposes of our penalty calculations, EPA Region III grouped violations of the same section of the CFR and circumstance level together for mathematical purposes while still accounting for the different extent of individual violations in such groupings e.g Four Violations of Recordkeeping Violations under 40 C.F.R. § 745.86(b)(6) with a Circumstance level of 6a were grouped together, but the calculations took into account the different extent of each violation (2 "Significant Extent" violations and 2 "Minor Extent" violations (CX 61).

The LBP Consolidated ERPP provides that civil penalties generally should, at a minimum, remove any significant economic benefit resulting from failure to comply with the law. The cost for Respondent come into compliance with the RRP Rule was approximately \$600: \$300 for firm certification and \$250-\$300 for renovator certification. As the cost to comply with the RRP Rule’s requirements can be split over multiple renovations, Complainant determined that Respondent’s economic benefit derived from noncompliance was relatively small and therefore has not included an economic benefit component in the penalty.

C. Gravity Component

Complainant determines the appropriate gravity-based penalty for each violation of the RRP Rule by considering the relevant “Circumstance Level” (Level 1 to Level 6) and the “Extent Category” (Major, Significant, or Minor) assigned to each violation by the LBP Consolidated ERPP. The “Circumstance Level” reflects the probability of harm resulting from a particular type of violation, from a high probability of impacting human health and the environment (Levels 1 and 2) to a medium probability (Levels 3 and 4), to a low probability (Levels 5 and 6). Complainant relied on Appendix A to the LBP Consolidated ERPP to determine the circumstance level of each violation.

The “Extent Category” represents the degree, range, or scope of a violation’s potential for harm. The measure of the extent of harm focuses on the overall intent of the RRP Rule and the amount of harm the rules are designed to prevent. The primary consideration for determining the extent of harm to be considered is whether the specific violation could have a serious, significant, or minor impact on human health, with the greatest concern being for the health of a child under 6 years of age and a pregnant woman in target housing. According to Appendix B, the Extent Categories are defined as: “Major” if a child under the age of six or a pregnant woman is affected, “Significant” if a child between six and 18 years old is affected, and “Minor” if no child is affected (See CX 63, Appendix B). Two of the properties (114 South Broad Street & 3403 Broadway Street Properties) were classified as Significant Extent because children between the ages of six and 18 years old resided at the affected properties.

According to Appendix A & B of the LBP Consolidated ERPP, the circumstance level and Extent of each violation are categorized as follows for penalty calculation purposes:

Count 1 (Not property specific)	Circumstance Level 3a, Minor Extent
Count 2 (114 South Broad Street)	Circumstance Level 3a, Significant Extent
Count 3 (238 Mt. Vernon Ave)	Circumstance Level 3a, Minor Extent
Count 4 (3716 Northmoor Ct)	Circumstance Level 3a, Minor Extent
Count 5 (3403 Broadway Street)	Circumstance Level 3a, Significant Extent

Count 6 (114 South Broad Street)	Circumstance Level 1b, Significant Extent
Count 7 (238 Mt. Vernon Ave)	Circumstance Level 1b, Minor Extent
Count 8 (3716 Northmoor Ct)	Circumstance Level 1b, Minor Extent
Count 9 (3403 Broadway Street)	Circumstance Level 1b, Significant Extent
Count 10 (114 South Broad Street)	Circumstance Level 6a, Significant Extent
Count 11 (238 Mt. Vernon Ave)	Circumstance Level 6a, Minor Extent
Count 12 (3716 Northmoor Ct)	Circumstance Level 6a, Minor Extent
Count 13 (3403 Broadway Street)	Circumstance Level 6a, Significant Extent
Count 14 (114 South Broad Street)	Circumstance Level 1b, Significant Extent
Count 15 (114 South Broad Street)	Circumstance Level 2a, Significant Extent

The Circumstance level and Extent of Each violation information in the table above will be applied in the final calculation found at the conclusion of Section VI(2) of this document.

D. Determining the Appropriate Inflation-Adjusted Gravity Based Penalty

Complainant then relied on Appendix B of the LBP Consolidated ERPP, the gravity based factors described in the chart above, and adjusted per the 2018 inflation guidance memo to reach the following penalty figures for the following violations (CX 61, CX 63, CX 64).

E. Consideration of Gravity-Based Adjustment Factors

After determining the appropriate inflation-adjusted gravity-based penalty, Complainant considered whether any factors warranted modifying the gravity-based penalty.

1. Ability to Pay Factor and Effect on Ability to Continue to Do Business

In accordance with the statutory factors outlined in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Complainant is required to consider Respondent’s ability to pay and effect on ability to continue to do business when determining the appropriate civil penalty. This duty is further elaborated upon in the LBP Consolidated ERPP, which provides that “Absent proof to the contrary, EPA can establish a respondent’s ability to pay with circumstantial evidence relating to a company’s size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty” (CX 63).

Complainant analyzed all information made available to it in order to determine whether Respondent had the ability to pay a civil penalty (CX 61, CX 62, Testimony of Craig Yussen). The Respondent has not alleged in its Answer or by other means that it is unable to continue to do business due to the proposed penalty, or provided any financial documentation to Complainant on its ability to continue to do business. Complainant determined Respondent would be able to pay such a penalty. In order to meet its burden to demonstrate an inability to pay a civil penalty, Respondent must submit financial information such as three to five years of its tax returns; balance sheets; income statements; statements of changes in financial positions; and statements of assets and liabilities (CX 63, CX 65).

Respondent has not submitted any additional information from which Complainant is able to determine that Respondent is unable to pay a civil penalty. As such, Respondent has not met its burden to demonstrate an inability to pay all or a portion of the calculated civil penalty (CX 63, CX 65) Therefore, Complainant has not adjusted the penalty based on Respondent's inability to pay or effect on its ability to continue to do business.

2. History of Prior Violations

Complainant is unaware of any prior TSCA Lead RRP violations alleged or assessed in the past five years. As such, Complainant did not adjust the penalty for this factor.

3. Degree of Culpability

The LBP Consolidated ERPP provides that this factor may be used to increase or decrease a gravity-based penalty where Respondent's knowing or willful violations reflect an increased responsibility on the part of the violator and may give rise to criminal liability (CX 63). Complainant determined there was no reason to seek such a penalty increase for this factor.

4. Attitude

The LBP Consolidated ERPP allows for a reduction of up to 30% of the gravity-based penalty to account for Respondent's attitude. This reduction includes: 1) 10% for cooperation—which refers to Respondent's response to the compliance evaluation and enforcement process; 2) 10% for compliance—which refers to good-faith efforts to come into compliance; and 3) 10% for early settlement (CX 63).

Complainant does not believe that an adjustment based on Respondent's attitude is warranted. First, Respondent has not cooperated with Complainant's efforts 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 has never agreed to early settlement so any reduction for early settlement would be inappropriate.

5. Other Factors as Justice May Require

The LBP Consolidated ERPP allows for an additional 25% reduction for other factors as justice may require. Complainant may consider compelling factors that have not otherwise been considered using the LBP Consolidated ERPP or unusual circumstances that suggest strict application is inappropriate (CX 63). Use of this reduction is rare but can be considered. Complainant is unaware of any factors that would warrant adjustment of the penalty based on other factors as justice may require so did not adjust the penalty based on this factor.

2. The Appropriate Penalty Calculation Based on a Consideration of all These Factors

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), required EPA to consider these statutory factors outlined and applied above: 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. Based on a consideration of all these factors Complainant believes that \$117,250 is an appropriate penalty for Respondent's fifteen violations of TSCA Lead RRP Violations (CX 61, CX 62, CX 63, CX 64, CX 65). The Determination was based on the following penalty calculations:

Count I for Renovating without Firm Certification: One (1) potential violation of 40 C.F.R. § 745.89(b) and 40 C.F.R. § 745.81(a)(2)(ii) – Failure to obtain initial EPA firm certification to performing renovations on pre-1978 properties for compensation. Circumstance Level 3a, Minor extent; Total Penalty = \$4,667.

Counts II through V for Renovating without a Certified Renovator Assigned to each Renovation: Four (4) potential violations of 40 C.F.R. § 745.89(d)(2) – Failure to ensure that certified renovators were assigned to the renovation. Circumstance Level 3a, Significant extent (2 renovations); Minor extent (2 renovations); Total Penalty = $(\$15,868 \times 2) + (\$4,667 \times 2) = \$41,070$.

Counts VI through IX for Failure to Distribute to Property Owners a Copy of EPA's "The Lead-Safe Certified Guide to Renovate Right" Pamphlet: Four (4) potential violations of 40 C.F.R. § 745.84(a)(1) – Failure to distribute to the property owner a copy of EPA's Renovate Right pamphlet prior to the renovation work. Circumstance Level 1b, Significant extent (2 renovations); Minor extent (2 renovations); Total Penalty = $(\$12,240 \times 2) + (\$4,080 \times 2) = \$32,640$.

Counts X through XIII for Failure to Make Available All Records Demonstrating the Performance of All Lead-Safe Work Practices: Four (4) potential violations of 40 C.F.R. § 745.86(b)(6) – 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). Circumstance Level 6a, Significant extent (2 renovations); Minor extent (2 renovations); Total Penalty = $(\$2,116 \times 2) + (\$622 \times 2) = \$5,476$.

Count XIV for Failure to Post Signs Clearly Defining Work Area and Warning Persons Not Involved in the Renovation to Remain Outside the Work Area (114 South Broad Street Property only): One (1) potential violation of 40 C.F.R. § 745.85(a)(1) – 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. Circumstance Level 1b, Significant Extent; Penalty = \$12,240.

Count XV for Failure to Cover the Ground with Plastic Sheeting or Other Impermeable Material Extending 10 Feet Beyond the Perimeter of Surfaces Undergoing Renovation (114 South Broad Street Property only): One (1) potential violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) – 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, whichever is greater. Circumstance Level 2a, Significant Extent; Penalty = \$21,157.

The Total sum of the penalties for Counts I through XV is \$117,250.

VI. RELEVANT GUIDANCES AND POLICIES

In Section II. above, Complainant has included a description of all EPA guidance documents and/or policies it currently is intending to rely on to support the allegations set forth in the Complaint.

Respectfully submitted,

Date

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