

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
GREENBUILD DESIGN &)
CONSTRUCTION, LLC)
)
Anchorage, Alaska)
)
Respondent.)
_____)

Docket No. TSCA-10-2021-0006

**UNSWORN STATEMENT OF MARIA
TARTAGLIA IN SUPPORT OF
COMPLAINANT’S INITIAL
PREHEARING EXCHANGE**

1 COMES NOW, Ms. Maria “Sucky” Tartaglia, to declare under penalty of perjury, the following:

2 **BACKGROUND AND JOB DUTIES**

- 3 1. I am currently employed as an Enforcement Protection Specialist and a Toxic Substances Control
- 4 Act (TSCA) Lead Based Paint Enforcement and Compliance Officer, with the U.S. Environmental
- 5 Protection Agency (EPA), Region 10, Enforcement and Compliance Assurance Division, Air Toxics
- 6 and Enforcement Section, based in Seattle, Washington.
- 7 2. I have worked for EPA since 1993.
- 8 3. I have been working with the TSCA Lead Based Paint section since 2010 and became a TSCA Lead-
- 9 Based Paint Enforcement and Compliance Officer in 2015.
- 10 4. As a TSCA Lead-Based Paint Enforcement and Compliance Officer, my job duties include
- 11 reviewing inspection reports and other relevant evidence to determine whether a company has
- 12 committed a violation of TSCA or of 40 C.F.R. Part 745, Subpart E (“Renovation, Repair, and
- 13 Painting Rule” or the “RRP Rule”).
- 14 5. If, in coordination with the TSCA inspectors, I determine that a company has committed violations
- 15 of TSCA or the RRP Rule, I then prepare an administrative enforcement action against that

1 company, including gathering additional evidence, preparing a compliance determination, and
2 calculating an appropriate penalty.

3 6. Since 2015, I have worked on approximately 30 TSCA Lead Based Paint administrative
4 enforcement actions, including both full penalty cases and expedited settlement agreements.

5 **FACTUAL SUPPORT FOR THE ALLEGATIONS AGAINST RESPONDENT**

6 7. I first became involved in this case around 2018, after Rob Hamlet informed me that the Respondent
7 failed to show up for an in-person inspection.

8 8. So, on April 12, 2018, I telephoned the Respondent and had a conversation with Mr. Rodrigo von
9 Marees—his name was Rodrigo Diaz, then—about TSCA and the RRP Rule requirements.

10 9. During that conversation, I informed Mr. von Marees that in order to work on pre-1978 homes, the
11 Respondent must be EPA firm certified and he must be EPA renovator certified.

12 10. Mr. von Marees told me that he understood the RRP Rule requirements and that he would no longer
13 work on pre-1978 homes.

14 11. After that conversation, I decided to also send the Respondent an advisory letter restating the RRP
15 Rule requirements as they applied to the Respondent.

16 12. In that letter, I informed the Respondent that if it worked on pre-1978 houses, it had to be certified
17 by the EPA as an RRP firm, and it could only employ individuals that are RRP certified renovators
18 or trained by RRP certified renovators. I also provided the Respondent with resources to obtain those
19 certifications, and what the penalty could be if the Respondent continued to violate the RRP Rule.

20 13. I sent that letter to Respondent via U.S. Certified Mail on April 25, 2018.

21 14. After sending the April 25, 2018 advisory letter, I was next informed about this case on July 25,
22 2018, immediately prior to Rob Hamlet and Kim Farnham arriving at 2208 Turnagain Parkway,
23 Anchorage, Alaska (the “Turnagain Property”) for their inspection.

1 15. Rob Hamlet sent a Notice of Inspection letter, dated July 2, 2018, to Greenbuild notifying it of the
2 scheduled July 26, 2018 RRP Inspection.

3 16. But, Greenbuild failed to confirm that it would attend the inspection before Mr. Hamlet and Ms.
4 Farnham left for Anchorage, Alaska to do RRP Inspections.

5 17. So, on July 25, 2018, Mr. Hamlet called me to let me know that he never received confirmation from
6 Mr. von Marees.

7 18. I told Mr. Hamlet that I would reach out to Mr. von Marees. I was able to get Mr. von Marees on the
8 telephone and he asked if he could reschedule. I explained to him that our inspectors were already in
9 Anchorage, Alaska and that the inspectors would reach out to him.

10 19. I then called Mr. Hamlet back, told him what Mr. von Marees said, and told him that Mr. von
11 Marees was at the Turnagain Property. I later found out that both Mr. Hamlet and Ms. Farnham had
12 driven to the Turnagain Property to conduct an onsite inspection.

13 20. After that inspection, I reviewed the inspection report prepared by Kim Farnham, photographs that
14 Rob Hamlet took during the inspection, and other materials in the case files.

15 21. After reviewing all of the relevant evidence, I concluded, in coordination with Kim Farnham, my
16 team lead, and my supervisor, that the Respondent had committed multiple TSCA and RRP Rule
17 violations and that an administrative enforcement action was warranted.

18 22. Specifically, I concluded that there was sufficient evidence to support four violations: (1)
19 Respondent offered to perform and performed a renovation in target housing without EPA firm
20 certification in violation of 40 C.F.R. § 745.81(a)(2)(ii); (2) Respondent failed to ensure its
21 employees were certified renovators or trained by certified renovators, in violation of 40 C.F.R. §
22 745.89(d)(2); (3) Respondent failed to post appropriate warning signs, in violation of 40 C.F.R.

1 §745.85(a)(1); and (4) Respondent failed to cover the ground with an impermeable material, in
2 violation of 40 C.F.R. § 745.85(a)(2).

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

4 23. Because I concluded that there was sufficient evidence to support four violations of the RRP rule, I
5 next completed a Compliance Analysis and Penalty Calculation Memorandum.

6 24. To calculate the appropriate penalty in this case, I relied on the *Consolidated Enforcement Response*
7 *and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule;*
8 *and Lead-Based Paint Activities Rule* (Aug. 2010) (RRP ERP), the *Section 1018 - Disclosure Rule*
9 *Enforcement Response and Penalty Policy* (Dec. 2007) (Section 1018 ERP), the *Amendments to the*
10 *EPA's Civil Penalty Policies to Account for Inflation and Transmittal of the 2018 Civil Monetary*
11 *Penalty Inflation Adjustment Rule* (Jan 11, 2018) (2018 Inflation Memo), and the *2020 Penalty*
12 *Policy Inflation Memo and 2020 Penalty Inflation Rule* (Jan. 2020) (2020 Inflation Memo).

13 25. According to the RRP ERP, in order to calculate an appropriate penalty, I first determine how many
14 independently assessable violations there are.

15 26. As described above, I determined that Respondent committed four independently assessable
16 violations.

17 27. Next, I determine whether the Respondent realized any economic benefit from its violations.

18 28. Here, I determined that due to the negligible cost of obtaining RRP firm and renovator certifications
19 Respondent did not realize significant economic benefit from its violations of the RRP Rule.

20 29. Then I go on to calculate the gravity-based penalty. The gravity-based penalty is determined by
21 considering the circumstance and extent levels of each violation.

22 30. For circumstance levels, I look to Appendix A of the RRP ERP, which lists out each specific
23 violation and its respective circumstance level.

1 31. For extent levels, I look to Appendix B of the RRP ERP, which describes the three different extent
2 levels—Major, Significant, and Minor.

3 32. Here, for violations 1, 2, and 4, the circumstance levels were 3a, 3a, and 2a, respectively, according
4 to Appendix A of the RRP ERP. The extent levels for all four violations was minor, because there
5 were no children present at the Turnagain Property.

6 33. After determining the circumstance and extent levels, I look to Appendix B to determine what the
7 appropriate penalty for each violation is.

8 34. Here, according to Appendix B of the RRP ERP, the appropriate penalties for violations 1, 2, and 4,
9 were \$4,500, \$4,500, and \$6,000, respectively.

10 35. Adding up those three numbers, I determined that the initial gravity-based penalty for violations 1, 2,
11 and 4 was \$15,000.

12 36. After determining the gravity-based penalty for violations 1, 2 and 4, I accounted for inflation using
13 the 2020 Inflation Memo.

14 37. I initially calculated the appropriate penalty in this case using the 2018 Inflation Memo, however as
15 this case had not settled before January 15, 2020—the effective date of the 2020 Inflation Memo—I
16 recalculated the penalty relying on the 2020 Inflation Memo.

17 38. The 2020 Inflation Memo provides a list of inflation multipliers that, when multiplied by the gravity-
18 based penalty, calculates the proper inflation-adjusted gravity-based penalty to assess.

19 39. Here, the 2020 Inflation Memo indicated that an inflation multiplier of 1.08203 was appropriate for
20 violations of the RRP Rule.

21 40. Therefore, I multiplied the initial gravity-based penalty for violations 1, 2, and 4 (\$15,000) by
22 1.08203 to arrive at the proper inflation-adjusted gravity-base penalty of \$16,230.

1 41. For violation 3, I still have to consider its circumstance and extent level to determine the appropriate
2 penalty. But rather than looking to the RRP ERP Appendixes to determine the appropriate penalty, I
3 consider the Section 1018 ERP. This is because footnote 30 to the 2020 Inflation Memo indicates
4 that certain RRP Rule violations are very similar to Section 1018 violations, and therefore should be
5 treated similarly for penalty purposes.

6 42. As such, based on footnote 30 to the 2020 Inflation Memo, I determined that violation 3 was a
7 circumstance 1b violation.

8 43. I also determine that violation 3 was a minor extent level, because no children were present at the
9 Turnagain Property.

10 44. Based on the Section 1018 ERP penalty matrix on page 30 of the Section 1018 ERP, the appropriate
11 penalty for a level 1b, minor violation is \$2,580.

12 45. Therefore, I determined that the appropriate gravity-based penalty for violation 3 was \$2,580.

13 46. Then, I multiplied that number by the corresponding inflation multiplier of 1.64990, based on the
14 2020 Inflation Memo, to arrive at the inflation-adjusted gravity-based penalty of \$4,257 for violation
15 3.

16 47. I then added the inflation-adjusted gravity-based penalties for violations 1, 2 and 4 (\$16,230), and
17 for violation 3 (\$4,257), together to get a total inflation-adjusted gravity-based penalty of \$20,487.

18 48. The RRP ERP then instructs me to consider specific factors to determine whether any adjustments to
19 the gravity-based penalty are warranted.

20 49. First, I consider Respondent's ability to pay a civil penalty. Section 16(a)(2)(B) of TSCA requires
21 me to take into account a Respondent's ability to pay when determining an appropriate civil penalty,
22 but the RRP ERP provides that without proof to the contrary, I can establish a Respondent's ability

1 to pay with circumstantial evidence relating to a company’s size and annual revenue. At that point
2 the burden shifts to Respondent to show that it cannot pay all or a portion of a civil penalty.

3 50. Here, I considered what circumstantial evidence I had available to me, including Respondent’s
4 OneStop and Company Investigator Report—commercial screening tools that provide some basic
5 information on companies. Both the OneStop and Company Investigator Report for Respondent
6 estimated that it had approximately \$108,000 in annual sales.

7 51. I also considered what factual information I had available to me about Respondent, including its
8 contract and invoice related to the renovation it performed on the Turnagain Property, both of which
9 indicated that Respondent would be paid more than \$100,000 for this job, alone.

10 52. After considering all of the evidence that I had available to me, I determine that it was likely
11 Respondent would be able to pay a civil penalty in this matter, but I remained open to considering
12 any additional financial information that Respondent was willing to submit.

13 53. Therefore, I determined that an adjustment to the gravity-based penalty was not warranted based on
14 Respondent’s ability to pay a civil penalty.

15 54. The second factor I considered was Respondent’s history of prior violation.

16 55. As Respondent has not been cited for violations of TSCA or the RRP Rule for at least the past five
17 years, I determine that an adjustment to the gravity-based penalty was not warranted based on this
18 factor.

19 56. The third factor I considered was Respondent’s degree of culpability.

20 57. The RRP ERP allows me to increase or decrease a gravity-based penalty, up to 25%, based on
21 Respondent’s culpability.

22 58. Here, based on a review of the case file and other evidence related to Respondent’s violations, I
23 determined that a 25% increase to the gravity-based penalty was warranted due to Respondent’s

1 culpability: Respondent had control over the events constituting the violations, had knowledge of the
2 regulations, and knew the legal requirements it violated.

3 59. I considered the following facts when making that determination:

- 4 a. First, prior to the July 25, 2018 inspection, EPA Region 10 contacted Respondent
5 numerous times, via both telephone calls and letters, to explain TSCA and the RRP Rule
6 requirements to it.
- 7 b. I, myself, had a telephone conversation with Respondent on April 12, 2018, where I
8 detailed the RRP Rule requirements and made it clear to Mr. von Marees that if
9 Respondent was not firm certified, and if he was not renovator certified, neither could
10 work on pre-1978 houses. Mr. von Marees said he understood the requirements and said
11 he would not work on pre-1978 houses anymore.
- 12 c. Second, EPA employees invited Respondent to attend an in-person inspection on
13 October 12, 2017, but Respondent failed to show for that inspection.
- 14 d. Third, as the inspection report makes clear, Kim Farnham had another conversation with
15 Mr. von Marees about his responsibilities and requirements under TSCA and the RRP
16 Rule during the July 25, 2018 inspection.
- 17 e. But just five days later, on July 30, 2018, Respondent pulled another building permit at
18 another pre-1978 house, without being firm or renovator certified.

19 60. Therefore, I determined that Respondent had control over the events constituting the
20 violation, had knowledge of the regulation, knew the legal requirements, yet violated them
21 anyway.

22 61. As a result, I increased the gravity-based penalty by 25% to account for Respondent's
23 culpability.

1 62. The fourth factor I considered was Respondent's attitude.

2 63. The RRP ERP allows me to reduce the gravity-based penalty by up to 30% for Respondent's
3 attitude.

4 64. The 30% figure is broken up into 10% increments for Respondent's cooperation in
5 responding to the compliance evaluation and enforcement process; good-faith efforts to come
6 into compliance; and early settlement.

7 65. After considering the facts and circumstances surrounding this case, I decided that an
8 adjustment based on Respondent's attitude was not warranted.

9 66. Respondent has not been cooperative during the compliance evaluation and enforcement
10 process, as indicated through its unwillingness to attend the in-person inspections EPA staff
11 attempted to schedule with Respondent.

12 67. Respondent has not made good-faith efforts to come into compliance, as indicated through
13 the repeated warnings EPA staff had to provide Respondent about the RRP Rule
14 requirements and the fact that Respondent obtained another building permit at a pre-1978
15 house just five days after the July 25, 2018 inspection.

16 68. And Respondent has not agreed to an early settlement of this case.

17 69. Therefore, I determined that an adjustment of the gravity-based penalty was not warranted
18 based on Respondent's attitude.

19 70. Finally, the RRP ERP allows me to reduce the gravity-based penalty up to an additional 25%
20 based on other factors as justice may require.

21 71. This factor allows me to consider anything that I believe warrants such consideration, but
22 which has not yet been considered during the penalty calculation process, or of which the
23 RRP ERP has not yet taken into account.

1 72. After considering all of the facts and circumstances surrounding this case, I determined that
2 there were no other factors present that would warrant an additional reduction in the gravity-
3 based penalty.

4 73. After considering which of the adjustment factors warrant an adjustment in the gravity-based
5 penalty, I recalculated the total penalty.

6 74. Here, the only adjustment factor that I determined warranted an adjustment in the gravity-
7 based penalty was a 25% upward adjustment based on Respondent's culpability.

8 75. The total inflation-adjusted gravity-based penalty before any adjustments was \$20,487.

9 76. 25% of \$20,487 is \$5,122, so after adjusting the gravity-based penalty the total penalty I
10 calculated in this matter was \$25,609.

11 77. After careful consideration of all of the relevant facts and circumstances surrounding this
12 case, and after considering the nature, circumstances, extent, and gravity of the violations
13 and, with respect to the violator, ability to pay, effect on ability to continue in business, and
14 any history of prior such violations, the degree of culpability, and such other matters as
15 justice may require, and without additional financial information submitted by Respondent, I
16 believe that \$25,609 is a fair and appropriate penalty to assess against this Respondent based
17 on its four violations of TSCA and the RRP Rule.

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____.

Respectfully submitted,

(Signature and Date)

Ms. Maria "Socky" Tartaglia

Enforcement Protection Specialist,

EPA Region 10, Enforcement and Compliance Assurance Division

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Unsworn Statement of Ms. Maria Tartaglia

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