



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

06/16/2020

VIA ELECTRONIC MAIL

Robert Lauter, Owner
 Prime Cut Paint
 1414 Baychester Avenue
 Norfolk, VA 23503
 primecutpaint@gmail.com

Re: Opportunity to Show Cause for Alleged Violations of
 Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E

Dear Mr. Lauter:

This letter concerns renovations conducted by your company, Prime Cut Paint, (Prime Cut Paint or you), at pre-1978 (target) housing located at:

114 S. Broad St. Suffolk, VA 23434
 238 Mt. Vernon Ave. Portsmouth, VA 23707
 3716 Northmoor Ct. Virginia Beach, VA 23452
 3403 Broadway St. Portsmouth, VA 23703

The U.S. Environmental Protection Agency, Region III (EPA), has reason to believe you may have violated the requirements of the Renovation, Repair, and Painting Rule (RRP Rule), codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 745, Subpart E, during the 2018 or 2019 renovations at the target housing identified above.

The RRP Rule¹ was promulgated to ensure that individuals are trained to conduct renovation and repair activities in a safe and proper manner while minimizing lead exposure to the public, occupants of target housing and child-occupied facilities, and the environment. It is unlawful under Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, for an individual or firm to violate any requirement of the RRP Rule.

The purpose of this letter is to inform you that, based on EPA's investigation to date, including, but not limited to, information obtained during EPA's July 23, 2019 records inspection (the narrative of the inspection report is enclosed for your reference), EPA believes that you may have violated the RRP Rule as follows:

Violation 1 (All referenced target housing)	Failure to obtain initial EPA firm certification to perform renovations on pre-1978 properties for compensation, as required by 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii).
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¹ See <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program-rules>



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Violations 2-5 (All referenced target housing)	Failure to ensure certified renovators were assigned to the renovation, as required by 40 C.F.R. § 745.89(d)(2).
Violations 6-9 (All referenced target housing)	Failure to distribute a copy of EPA's <i>Renovate Right</i> pamphlet to the property owner and obtain an acknowledgement of receipt prior to the renovation work, as required by 40 C.F.R. § 745.84(a)(1).
Violations 10-13 (All referenced target housing)	Failure to make available all records necessary to demonstrate that the renovator performed all lead-safe work practices as 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), as required by 40 C.F.R. § 745.86(b)(6).
Violation 14 (114 S. Broadway Street renovation only)	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, as required by 40 C.F.R. § 745.85(a)(1).
Violation 15 (114 S. Broadway Street renovation only)	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, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

If you have information relevant to the suspected violations identified above that you wish EPA to consider, EPA requests that you provide such information within **10 calendar days of receipt** of this letter. Any such information, except information which you characterize as "Confidential Business Information", as described below, should be emailed to Mr. Craig E. Yussen at yussen.craig@epa.gov. Due to the COVID 19 pandemic, EPA is not regularly receiving postal mail or express mail at this time. EPA will review and consider any and all information you provide in advance of any requested settlement conference, so long as that information is accompanied by the following certification, signed and dated by a responsible corporate officer (or business owner):

I certify that the information contained in or accompanying this response is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

In addition, EPA invites you to meet (via teleconference) with EPA to discuss potential administrative resolution of the suspected violations. Please respond within 10 calendar days of receipt of this letter.

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In determining the amount of a penalty to propose in any enforcement action, Section 16(a)(2)(B) of TSCA requires that EPA consider “the nature, circumstances, extent and gravity of the violation ... 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.” 15 U.S.C. § 2615(a)(2)(B). To develop a proposed penalty in any enforcement action, EPA will take into account the particular facts and circumstances of this case, with specific reference to EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (revised April 2013)², as amended, and the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19. If applicable, EPA will also use EPA’s September 20, 2019 *Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements*³, which provides a reduced penalty for an entity that demonstrates that its net worth or pre-tax (unadjusted) gross annual revenue does not exceed \$600,000 or \$2 million, respectively. If you believe you qualify for the pilot policy, please submit a copy of your most recent corporate federal tax return.

You are entitled to assert a claim of business confidentiality covering part or all of any submitted information in the manner described in 40 C.F.R. Section 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no business confidentiality claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to you. 41 *Fed. Reg.* 36,902 (Sept. 1, 1976), as amended at 43 *Fed. Reg.* 40,000 (Sept. 8, 1978); 50 *Fed. Reg.* 51,661 (Dec. 18, 1985).

Any information submitted to EPA claimed by you as “business confidential” should be placed in a double envelope, with the inner envelope denoted as “Confidential – To be opened by addressee only,” and sent, via Federal Express to: *Mr. Kyle Chelius (3LC40), Document Control Officer, LCD, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029*. Please be advised that any business confidentiality claim may be subject to review by EPA to determine its validity. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice to you, to any member of the public who requests it. Please note that even if EPA determines, under the criteria provided by 40 C.F.R. Section 2.208, that certain information may not be entitled to business confidential treatment, EPA may nevertheless decide that disclosure of such information may constitute an invasion of privacy and, on that basis, may withhold it from disclosure to the general public. It is not necessary for a business confidentiality claim to be made for EPA to withhold personal privacy information. Whether you choose to make a business confidentiality claim or not, please clearly indicate personal privacy information contained in your response so that EPA can evaluate it accordingly.

EPA has not determined whether Prime Cut Paint is a “small business” under the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”). Please refer to the U.S. EPA Small Business Resources Guide⁴ to determine if it applies to you. As noted, on the website, any decision to participate in such program or to seek compliance assistance does not relieve Prime Cut Paint of its obligation to respond in a timely manner to an EPA information request or other enforcement action and does not create any new rights or defenses under law.

² See <https://www.epa.gov/sites/production/files/2014-01/documents/revisedconsolidated-erppenaltypolicy4513.pdf>

³ See <https://www.epa.gov/enforcement/lead-based-paint-graduated-penalty-approach-policy>

⁴ See <https://www.epa.gov/compliance/small-business-resources-information-sheet>

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If you are interested in meeting with EPA to discuss this matter, please contact Craig Yussen at 215-814-2151 or yussen.craig@epa.gov or your legal counsel may contact the attorney assigned to this matter, Patrick Foley, at (215) 814-2694 or Foley.Patrick.J@epa.gov, within **10 calendar days** of your receipt of this letter.

Sincerely,

KAREN
MELVIN

Digitally signed by
KAREN MELVIN
Date: 2020.06.16
07:49:16 -04'00'

Karen Melvin, Director
Enforcement & Compliance Assurance Division

Enclosure (1)

cc: C. Yussen (3ED23)
P. Foley(3RC30)