

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2021-0013
)	
TWDS, Inc., d/b/a Windows Direct USA of Cincinnati,)	
)	
Respondent.)	
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COMPLAINANT’S INITIAL PREHEARING EXCHANGE

COMES NOW, the U.S. Environmental Protection Agency, Region 5 (Complainant), in response to this Tribunal’s November 3, 2021 Prehearing Order, to respectfully submit its Initial Prehearing Exchange, stating as follows:

I. 1(A). WITNESSES INTENDED TO BE CALLED

Paul J. Novak Jr.
Olmsted Twp., Ohio

Complainant intends to call Paul J. Novak Jr. as a fact witness in this matter. Mr. Novak will testify as to his background and work experience in EPA Region 5’s Cleveland Office, and later in EPA Region 5’s Enforcement and Compliance Assurance Division, and his experience as a federal inspector.

Mr. Novak will testify that prior to his retirement from EPA on July 30, 2021, he worked at EPA as a federal inspector for thirty years, beginning in 1991. Mr. Novak was certified to conduct inspections for compliance with five federal environmental statutes, including the Toxic Substances Control Act (TSCA), which requires additional training to handle proprietary and other chemical information. Mr. Novak will testify he was originally certified as an EPA inspector shortly after he began working at EPA in 1991. Mr. Novak will testify that most EPA inspectors have a science degree background, and that he holds a degree in Geology from Cleveland State University. Mr. Novak will testify that for at least the past fifteen years, EPA’s inspectors have been required to take annual training to ensure their training is current. If the EPA inspector intends to conduct TSCA inspections, the inspector must also take annual TSCA confidential business information, or “CBI” training, since TSCA requires greater protection for handling of business information. In addition to his annual training, Mr. Novak will testify that he has participated as an instructor for an EPA training course entitled “Basic Inspector Training,” provided by EPA to new EPA inspectors, on at least two occasions. Mr. Novak will testify that among other things, EPA inspectors are trained never to threaten anyone who denies access, and to immediately leave and contact their EPA supervisor if the inspector is denied access.

Mr. Novak will testify that in some instances, an EPA inspector conducts inspections individually, and sometimes as part of a team, depending on factors including the level of complexity of the facility. Mr. Novak has been on numerous inspections of small and large businesses. In some instances, EPA notifies a company ahead of time that it intends to conduct an inspection, referred to as an “announced” inspection, and sometimes the company is not notified ahead of time, referred to as an “unannounced” inspection. Mr. Novak will testify that in his experience, he conducted more unannounced than announced inspections.

Mr. Novak will testify that his federal inspector credentials were current on October 7, 2019, when he attempted to conduct an inspection at Windows Direct’s business office located at 11258 Cornell Park Drive, Suite 612 in Blue Ash, Ohio.

Mr. Novak will testify that in preparation for the attempted October 7, 2019 inspection, he attempted to locate EPA certified firm information for Windows Direct USA of Cincinnati, and no current firm certification was listed in EPA’s Federal Lead-Based Paint Program (FLPP) database. Mr. Novak will testify that he attempted to locate EPA certified renovator information for Mr. Chris Carey, and no current certified renovator information for Mr. Carey was listed in EPA’s FLPP database.

Mr. Novak will testify that on October 7, 2019, he went to Blue Ash, and attempted to conduct an in-person, unannounced inspection at Windows Direct’s business office at 11258 Cornell Park Drive, Suite 612, Blue Ash, Ohio. Mr. Novak will testify that he entered the business office, which appeared to be a showroom with windows. Mr. Novak will testify that he presented his federal inspector credentials and provided his business card to a female employee, and asked to speak with the person in charge of environmental matters. Mr. Novak will testify that the female employee left, and returned with a person who identified himself as Ryan Eger, Windows Direct. Mr. Novak will testify he presented his federal inspector credentials to Mr. Eger, and explained the purpose of his inspection was to review records related to the company’s compliance with the RRP (Lead Renovation, Repair and Painting) Rule, codified at 40 C.F.R. Part 745, Subpart E. Mr. Novak will testify he then presented a written list of jobs performed by Windows Direct in certain locations that Mr. Novak wanted to review, to which Mr. Eger said he did not have time for this. Mr. Novak will testify he said he could come back tomorrow, and Mr. Eger said no. Mr. Novak will testify he gave Mr. Eger a second business card and Mr. Eger then walked away, and dropped the written list of jobs that Mr. Novak had given him. Mr. Novak will testify that he immediately left the premises, and did not have the chance to issue a TSCA Notice of Inspection or the TSCA Inspection Confidentiality Notice.

Mr. Novak will testify he got in his car, drove away from the immediate area, wrote up his notes, and contacted his supervisor, Brooke Furio, to report he had been denied access. Mr. Novak will testify that he understood his supervisor would contact Ms. Estrella Calvo, who he anticipated would call Mr. Eger with an attorney from EPA on the line to explain why the EPA inspector was authorized by law to conduct this inspection. Mr. Novak will testify that he anticipated he would be contacted later that day by his supervisor to return and conduct the inspection. Mr. Novak will testify that after further conversation with his supervisor, Mr. Novak was instructed to spend the night in the Cincinnati area and return to EPA’s Cleveland Office the next day.

In addition to testifying about his preparation for the inspection, Mr. Novak will also testify about the logistics for conducting an inspection, including travel arrangements, time spent driving, and other factors related to the logistics of deploying an EPA inspector. Mr. Novak will testify that he spent between 4 and 5 hours driving each way from Cleveland to the Cincinnati area. Mr. Novak will testify he left EPA's Cleveland Office on the morning of October 7, 2019, and had made arrangements to stay overnight at a hotel before returning to EPA's Cleveland Office on the morning of October 8, 2019.

Mr. Novak will also testify about his preparation of his October 10, 2019 report to document his denial of access. He will explain the report is reviewed by his manager, and becomes an EPA agency record. Mr. Novak will authenticate his October 10, 2019 report, included as an exhibit in this prehearing exchange.

Mr. Novak will testify that to the best of his recollection, in his experience in conducting inspections, he can only recall five instances in thirty years when he was denied access to conduct an inspection. Further, Mr. Novak will testify that in four of those five instances, either he or another member of the EPA inspection team was able to perform the inspection the same day after an EPA manager, along with an EPA attorney, or just an EPA attorney, contacted the company to explain EPA's authority to conduct an inspection. Mr. Novak will testify that in his thirty years conducting federal inspections, there was only one instance where he individually, or as part of a team of EPA inspectors, was not allowed to conduct an inspection on the day he or the team attempted to conduct an inspection. Mr. Novak will testify that the single time in his thirty years where he was denied permission to conduct an inspection was with respect to his attempt to conduct an inspection at Windows Direct's business office in Blue Ash, Ohio.

Mr. Novak will testify that he was aware that in 2019, the EPA Administration announced its commitment to reducing children's exposure to lead hazards, and as a result, EPA was increasing the number of inspections related to compliance with regulations designed to reduce lead exposure, including inspections under the RRP Rule.

Mr. Novak will be able to offer his opinion on this case, particularly on the issue of denial of access to a federal inspector, and the impact on EPA's ability to conduct its oversight role and other responsibilities if federal inspectors are denied access to conduct an authorized inspection.

Estrella Calvo
Section Chief
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5 (ECP-17J)
77 West Jackson Boulevard
Chicago, Illinois 60604
Phone: 312-353-8931
calvo.estrella@epa.gov

Complainant intends to call Estrella Calvo as a fact witness in this matter. Ms. Calvo is currently the Manager of the Pesticides and Toxics Compliance Section (PTCS), in the Land

Enforcement Compliance Assurance Branch, in the Enforcement and Compliance Assurance Division in EPA Region 5. Ms. Calvo earned her Bachelor of Science degree in May 2005 with a major in Biological Sciences and a minor in Criminal Justice from the University of Illinois at Chicago. She began her career at EPA in June 2005 as a Lead Inspector/Enforcement Officer in EPA Region 5's PTCS. She served as a Team Leader in PTCS beginning in July 2012, and transitioned into management in December 2016. From December 2016 to April 2019, she managed the Pesticides Program Section. From April 2019 to June 2019, she served as an Associate Branch Chief for the Land Enforcement and Compliance Assurance Branch. Since June 2019, she has served as the Manager for PTCS, with the exception of a brief 120-day period from May 2020 to September 2020, when she served as the Water Enforcement Branch Manager. In her current position as the Manager of the PTCS, her duties include, in part, providing leadership, guidance and support to staff to carry out the EPA (Agency) mission; managing and implementing, in accordance with Agency policies, the Regional Enforcement Programs for compliance monitoring and enforcement of environmental statutes including the Emergency Planning and Community Right to Know Act (EPCRA) Section 313, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and TSCA, including programs referred to as TSCA-Asbestos Hazard Emergency Response Act (AHERA), TSCA-Core, and TSCA-Lead RRP/Lead-Based Paint Disclosure Rule (Section 1018 of TSCA).

Ms. Calvo will testify that she received her federal inspector credentials by approximately 2006. She will testify that she completed Basic Inspector Training, and has maintained her federal inspector credentials, which includes annual inspector training, to conduct inspections under EPA's FIFRA program.

Ms. Calvo will testify that to the best of her recollection, she has performed at least 60 inspections under TSCA and FIFRA. She will further testify that she has never been denied access to conduct an inspection.

Ms. Calvo will testify that as an EPA Manager, she has participated in calls with companies that have initially denied access to EPA Inspectors, and in all but one of these instances, has always been able to ensure access is provided to EPA's Inspector on the same day an inspection was attempted.

Ms. Calvo will testify that on October 1, 2019, she received a complaint alleging Windows Direct in Cincinnati, Ohio had installers that engage in window installation projects. The complaint alleged that Windows Direct's installers did not perform window installation projects in accordance with lead safe practices, and that none of the installers actually engage in the required methods for a lead safe window removal. The complaint also alleged that the company has the installers fill out lead safe forms regardless of whether the project was a lead installation project, or whether or not the lead safe practices were used. The complaint advised that a quick audit of the company records would show that the forms are filled out but not signed by the homeowner. The complaint also stated that when a job does require a lead safe removal, plastic may be hung or laid, but no other lead safe practices are used. The complaint stated these were ongoing violations.

Ms. Calvo will testify that on October 2, 2019, she asked EPA Region 5's Multimedia Section Manager if an inspector could perform an inspection of Windows Direct's office. She will testify that she was notified that an inspector from Region 5's Multimedia Section was scheduled to conduct an inspection on October 7, 2019.

Ms. Calvo will testify that on October 7, 2019, Inspector Paul Novak's supervisor contacted her and advised her that Inspector Novak was denied entry to perform an inspection at Windows Direct's business office located in Blue Ash, Ohio, and that he was in a vehicle near the facility awaiting further instructions.

Ms. Calvo will testify that on October 7, 2019, she contacted Inspector Novak to learn more about the denial of access to conduct an inspection. She will testify that Mr. Novak indicated he spoke with Mr. Eger at Windows Direct's business office who did not allow Inspector Novak to conduct an inspection.

Ms. Calvo will testify that on October 7, 2019, she contacted Mary McAuliffe of EPA Region 5's Office of Regional Counsel to inform her that an EPA inspector had been denied entry to conduct an RRP inspection at Windows Direct, and to request her assistance with contacting Mr. Eger to confirm Mr. Novak's identity and the reason for the inspection.

Ms. Calvo will testify that on October 7, 2019 at 2:07 pm (Central), she and Mary McAuliffe attempted to contact Mr. Eger using the number provided to Ms. Calvo by Inspector Novak's supervisor, and reached Mr. Chris Carey. She will testify that Ms. Calvo and Ms. McAuliffe identified themselves as EPA representatives. Ms. Calvo will testify she explained the authority under which EPA was authorized to conduct an inspection, and informed Mr. Carey that Mr. Novak was in fact an EPA inspector there to perform an inspection on behalf of the EPA. Ms. Calvo will testify Mr. Carey informed Ms. Calvo and Ms. McAuliffe that he would not agree to an EPA inspection and that EPA would need to schedule an appointment to perform the inspection. Ms. Calvo will testify she asked Mr. Carey if his company ever conducted work on pre-1978 housing and he stated hardly any. Ms. Calvo will testify she informed Mr. Carey that it is a violation of TSCA to refuse to permit EPA to conduct an inspection, and again explained the reason for the inspection. Mr. Carey informed Ms. Calvo and Ms. McAuliffe that he would not agree to a federal inspection. Ms. Calvo informed Mr. Carey that the regulations require renovators of pre-1978 housing to establish and maintain or make available or permit access to or copying of records, and that if EPA was not able to perform the inspection it would need to consider its other options, including the issuance of a subpoena for records to determine Windows Direct's compliance with the Rule. Ms. Calvo will testify Mr. Carey advised again that he would not permit an inspection. Ms. Calvo asked Mr. Carey if he was formally denying EPA access to records to evaluate his company's compliance with the RRP Rule, and Mr. Carey said yes.

Ms. Calvo will testify that on October 10, 2019, pursuant to Section 11(c) of the Toxic Substances Control Act, 15 U.S.C. § 2610(c), EPA issued a Subpoena Duces Tecum (TSCA Subpoena) to TWDS, Inc., Registered Agent, Windows Direct of Cincinnati, 1612 Scott Street, Covington, Kentucky 41011.

Ms. Calvo will testify that on October 15, 2019, EPA sent a copy of the October 10, 2021 Windows Direct USA of Cincinnati report documenting Inspector Novak's attempt to conduct an inspection to Mr. Carey.

Ms. Calvo will testify that on October 22, 2019, EPA received via email a letter from Respondent's counsel stating Windows Direct is incorporated under the name of TWDS, Inc., and that Chris Carey is the principal of TWDS, Inc. The letter also stated that Chris Carey had been previously been licensed by EPA, and that TWDS, Inc. uses certified EPA installers in installing its windows. Attached to the letter were copies of the articles of incorporation, and certificates for four of TWDS, Inc.'s installers.

Ms. Calvo will testify that on October 22, 2019, EPA sent via email a letter to Respondent's counsel acknowledging receipt of Respondent's October 22, 2019 letter. In this letter, among other things, EPA's letter informed Respondent that the RRP Rule required that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an authorized state), and that EPA had no information indicating Windows Direct of Cincinnati was a certified firm.

Ms. Calvo will testify that on November 4, 2019, EPA received via email a letter from Respondent's counsel that, among other things, advised EPA that Windows Direct USA uses the Renovation Recordkeeping Checklist, and included several records of jobs.

Ms. Calvo will testify that on November 6, 2019, EPA issued a letter indicating EPA agreed to modify the TSCA Subpoena issued to Windows Direct, and directed that rather than supplying records for all renovations for the period of October 7, 2016 to October 7, 2019, Respondent could instead provide a list of renovations conducted by Windows Direct for the period of October 7, 2016 to October 7, 2019, which is the period of time for which EPA had required production of all records responsive to EPA's TSCA Subpoena, with the understanding EPA would then request production of a subset of records responsive to EPA's TSCA Subpoena.

Ms. Calvo will testify that on November 13, 2019, EPA received via email a letter from Respondent's counsel that, among other things, included a list of over 2,000 renovation projects performed by Respondent from October 7, 2016 to October 7, 2019.

Ms. Calvo will testify that she reviewed the list of over 2,000 renovation projects performed by Respondent, and randomly selected 35 renovation projects for which EPA was requiring production of documents.

Ms. Calvo will testify that on November 29, 2019, EPA sent a letter to Respondent's counsel that, among other things, identified the 35 renovation projects for which EPA was requesting the information required by EPA's TSCA Subpoena, and indicated EPA was requiring production of the modified subpoena response by January 13, 2020.

Ms. Calvo will testify that on December 23, 2019, EPA's National Program Chemicals Division, Office of Pollution Prevention & Toxics, informed Mr. David Star, Senior

Enforcement Advisor in the Land and Chemicals Enforcement and Compliance Assurance Branch, in the Enforcement and Compliance Assurance Division in EPA Region 5, of EPA that Windows Direct USA's application for firm certification was approved and that the certification package had been emailed to the applicant. Ms. Calvo will testify she was advised that Mr. Carey acknowledged receipt of this communication that same day.

Ms. Calvo will testify that in December 2019, she assigned Ms. Christina Saldivar as the enforcement officer for this matter.

Ms. Calvo will testify that on January 24, 2020, EPA informed Respondent's counsel that, among other things, EPA did not receive an executed Declaration along with the renovation documents provided by Respondent, and asked Respondent to provide EPA with a completed Declaration.

Ms. Calvo will testify that Respondent provided the executed Declaration on January 28, 2020.

Based on her expertise in numerous environmental statutes, including TSCA, and her experience with EPA inspections, including TSCA inspections, Ms. Calvo will be able to offer her opinion on this case, on the issue and burden associated with denial of access to conduct an inspection, on the importance of compliance with the RRP Rule, and on the appropriateness of the penalty.

If necessary, Ms. Calvo will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

Anton (Tony) Martig
Section Chief
TSCA and Pesticides Section
Land, Chemicals and Redevelopment Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Phone: 312-353-2291
martig.anton@epa.gov

Complainant intends to call Anton Martig as a fact witness in this matter. Mr. Martig will testify as to his background and work experience in EPA Region 5. Mr. Martig has been with EPA Region 5 for over thirty years. He holds a Bachelor of Science in Engineering from the University of Illinois at Chicago. He started in EPA Region 5 as a permit writer and inspector in the polychlorinated biphenyls (PCB) program, and among other things, served as Region 5's PCB Program Manager, where he led the PCB stakeholder workgroup under the Great Lakes Binational Toxics Strategy, and acted as manager of the Region's Toxics Reduction Team. Mr. Martig has spent a total of 14 years as the supervisor of EPA Region 5's Toxics Section, renamed to the TSCA and Pesticides Section after a Regional realignment, overseeing programs including the Region's lead-based paint, TSCA, Toxic Release Inventory, and Green

Chemistry programs. Mr. Martig also spent 2 years as a supervisor in EPA's corrective action program for projects to address releases to the environment under several federal environmental statutes, including TSCA, and the federal statutes that address hazardous waste and leaking underground storage tanks.

With respect to his experience with federal regulations pertaining to lead-based paint, Mr. Martig will testify that prior to the effective date of the RRP Rule, he was involved in EPA's lead abatement program, and participated in review of the proposed RRP Rule.

Mr. Martig will testify that the RRP Rule pre-renovation education requirements to provide owners and occupants with the educational lead pamphlet for projects that may disturb lead paint in homes built before 1978, have been in effect since 1999 (63 Fed. Reg. 29908, June 1, 1998), and the remaining requirements of the RRP Rule became effective in April 2010.

Mr. Martig's current role is as a supervisor in EPA Region 5's TSCA and Pesticides Section where, among other duties, he oversees Region 5's programs for (1) RRP regulation implementation and (2) EPA's Certified Renovator training accreditation, which ensures that any trainer or program seeking to train RRP-Certified Renovators complies with the basic elements of EPA's training modules.

Mr. Martig will testify that the RRP certification requirement for firms offering to perform renovations for compensation in residential properties constructed prior to 1978, and in other facilities visited by children under the age of six, is important because it is required by federal law.

Further, Mr. Martig will testify that RRP firm certification is important because it gives homeowners confidence that the company they are engaging to perform work that may disturb lead-based paint is aware of the regulatory requirements, and the steps the company needs to take to be sure work is performed in a manner that protects families.

Mr. Martig will testify that EPA provides online information about RRP-certified firms on EPA's website because EPA knows that RRP-certified firms understand the firm certification requirements, which implies an understanding of the RRP Rule requirements and the basis of the RRP Rule, which is designed to protect homeowners and renters from lead hazards that may result from failure to comply with the requirements of the RRP Rule.

Mr. Martig will testify that as part of EPA's educational outreach, EPA recommends that customers seeking to perform projects that may disturb lead-based paint in residential property they own or rent, look for the EPA RRP Firm Certification logo, and the EPA Certified Renovator logo, and ask about the company's RRP Firm Certification status. Mr. Martig will testify that EPA's website also helps homeowners know which companies are not certified, and which are therefore likely either not complying with the RRP Rule, or are not carefully complying with the RRP Rule requirements. Mr. Martig will testify that if a company is not complying with one federal regulation, that company may not be complying with other federal regulations.

Mr. Martig will authenticate EPA's educational information included in the prehearing exchange.

Mr. Martig will testify that as part of EPA's accreditation of RRP trainers, he oversees the Region 5 personnel who ensure that any trainer seeking EPA-accreditation is providing training that complies with EPA's approved training modules for Certified Renovators requiring EPA-approved Initial Training and Refresher Training, and Dust Sampling Technicians requiring Initial Training and Refresher Training.

Mr. Martig will authenticate related information including EPA information pertaining to EPA-approved RRP training materials included in the prehearing exchange.

Mr. Martig may testify that in his experience as an EPA PCB inspector, he was never denied access to conduct an inspection, except that on one occasion, he was briefly prevented from conducting an inspection, but later the same day, the company agreed to allow him to proceed with his inspection.

Mr. Martig will be able to offer his opinion on this case, particularly on the issue of the importance of RRP Firm Certification and RRP Renovator Certification to ensure families are protected from potential exposure to lead-based paint during renovations performed in properties they own or rent.

Christina Saldivar
Environmental Engineer
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5 (ECP-17J)
77 West Jackson Blvd
Chicago, Illinois 60604
Phone: 312-886-0755
saldivar.christina@epa.gov

Complainant intends to call Ms. Saldivar as a fact witness. Ms. Saldivar is an Environmental Engineer, Compliance Officer and Inspector for the U.S. Environmental Protection Agency (EPA), Region 5, Enforcement and Compliance Assurance Division. Ms. Saldivar will testify as to her background and work experience in EPA Region 5, serving as a Compliance Officer and Inspector for TSCA, including the RRP Rule, Section 1018 (collectively referred to as the Lead-Based Paint Program), and AHERA.

Ms. Saldivar has worked at EPA Region 5 since January 9, 2017, starting as an Environmental Engineer and TSCA Inspector in 2017. Ms. Saldivar holds a Bachelor of Science degree in Environmental Engineering from Texas A&M University in Kingsville, Texas. In her role at EPA Region 5, Ms. Saldivar will testify that, among other things, she reviews and implements regulations, policies, and operating guidance for the EPA Region 5 TSCA Lead-Based Paint Program and AHERA.

Ms. Saldivar's duties as a TSCA Inspector and Compliance Officer include conducting onsite inspections and off-site compliance monitoring activities of the regulated community under TSCA to collect information on compliance in accordance with EPA's compliance monitoring policies and guidance, drafting inspection reports, reviewing inspection reports, and evaluating other relevant evidence to determine a regulated entity's compliance with TSCA, preparing compliance determinations for management review and approval, determining the appropriate penalty amount for noncompliance in accordance with EPA's enforcement policies and guidance, and finalizing administrative settlements for Agency approval.

For EPA Region 5's TSCA Lead-Based Paint program, among other things, Ms. Saldivar investigates renovation firms and renovators who offer, perform, or claim to perform renovation activities on pre-1978 residential housing, or "target housing," and child-occupied facilities (places visited by children under the age of 6 years). Ms. Saldivar also collects information necessary to determine the renovation firms' and renovators' compliance with the RRP Rule in furtherance of EPA's mission of maintaining environmental compliance of ongoing operations, and remediating past environmental violations or compliance problems.

Ms. Saldivar will testify that she has completed EPA Region 5's training requirements for TSCA Inspectors under EPA Order 3500.1, which establishes the minimum and consistent Agency-wide training and development programs for EPA employees conducting, participating in, or assisting with environmental compliance inspections and field investigations.

Ms. Saldivar's training includes the following mandatory training requirements: (1) Occupational Health and Safety courses; (2) Basic Inspector Training (BIT) Curriculum; (3) Program-Specific Curriculum, including specific TSCA Lead-Based Paint and TSCA AHERA topics; (4) Annual refresher inspector training topics; and (5) Annual refresher training for specific-TSCA Lead-Based Paint and TSCA AHERA topics.

Ms. Saldivar will testify she has been a credentialed TSCA Inspector authorized to represent EPA in conducting environmental compliance inspections and field investigations for the TSCA Lead-Based Paint since August 17, 2017, and subsequently became authorized to represent EPA for the TSCA Asbestos program. Ms. Saldivar will testify that she has taken the appropriate annual refresher inspector training courses and annual refresher training for specific-TSCA Lead-Based Paint and TSCA Asbestos topics. Ms. Saldivar will testify she also has taken the annual TSCA Confidential Business Information (CBI) training, and is cleared to receive and review TSCA CBI since TSCA requires greater protection for information that is CBI.

Ms. Saldivar will testify that she has taken *the Lead Renovation, Repair and Painting 8HR Initial (RRPI)* from Public Health and Safety, Inc., and became an EPA Certified Renovator on August 3, 2017.

Ms. Saldivar will testify she has completed over 18 TSCA lead-based paint inspections and processed over 15 administrative penalty enforcement actions in EPA Region 5's Lead-Based Paint Program.

Ms. Saldivar will testify that in her five years of conducting TSCA inspections, she has never been denied access to conduct an inspection at a company's business office.

Further, based on her experience and knowledge of TSCA, Ms. Saldivar will testify as to how appropriate penalties are calculated in TSCA lead-based paint cases and why such penalties are necessary. Ms. Saldivar will be able to offer her opinion on this case, its importance in upholding the TSCA regulatory scheme, and the appropriateness of the penalty. Relying on that information and her experience with and knowledge of the relevant EPA penalty policies, Ms. Saldivar calculated the proposed penalty in this matter. As such, Ms. Saldivar will testify about the operation of the various applicable penalty policies and how she calculated the proposed penalty for this case. She will also offer her opinion regarding the appropriateness of the proposed penalty, considering the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, the effect on its ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require.

Kristin A. Keteles, Ph.D.

Senior Toxicologist

U.S. EPA National Enforcement Investigations Center

Denver Federal Center

PO Box 25227, Bldg 25, Rm 2A-215

Denver, CO 80225

Phone: 303-462-9313

Keteles.Kristen@epa.gov

Complainant intends to call Kristen A. Keteles, Ph.D., as an expert witness. Dr. Keteles is employed as a Senior Toxicologist by EPA at the National Enforcement Investigations Center (NEIC) in Denver, Colorado. She has a Ph.D. in zoology from Louisiana State University with emphasis in environmental toxicology. Dr. Keteles routinely conducts human health risk assessments, and serves as a national expert on adverse health effects from environmental exposure to chemicals, including risks from exposure to lead.

Dr. Keteles has testified as an expert witness in the proceedings identified in her Curriculum Vitae, included as Complainant's Exhibit 1 in this prehearing exchange.

Among other topics, Dr. Keteles will testify about the hazards that lead poses to children if lead safe work practices, developed to reduce the amount of dust during renovation, are not followed during window replacement in older homes where children reside. She will testify about why it is important that workers be trained and certified in lead safe work practices.

Dr. Keteles will also testify about the importance of ensuring that homeowners or occupants be made aware of the hazards associated with lead dust from renovations in older homes.

Dr. Keteles will authenticate her December 15, 2021 report entitled, “Hazards of Lead to Children and the Importance of Lead Safe Work Practices to Reduce Exposure,” included as Complainant’s Exhibit 62 in this prehearing exchange.

Ekaterina (Katya) Smirnova
 Senior Associate
 Industrial Economics, Inc.
 2067 Massachusetts Ave.
 Cambridge, MA 02140
 Phone: 617.354.0074 x206
KSmirnova@indecon.com

Complainant may call Ekaterina (Katya) Smirnova to testify as an expert witness. Ms. Smirnova, a Certified Fraud Examiner (CFE) and a Senior Associate with Industrial Economics, Inc., specializes in economic, financial, and policy analysis in the context of enforcement proceedings, litigation, and policy making. Ms. Smirnova provides expert analytical support to a wide range of clients on projects involving assessments of economic benefit of noncompliance and financial capabilities of businesses, individuals, municipalities, and other types of entities to finance investments in environmental controls and pay for penalties. Ms. Smirnova has provided testimony and has been retained as a testifying expert in various jurisdictions.

Ms. Smirnova has evaluated publicly available financial information as well as financial information provided by Respondent after the Complaint was filed in this matter, and has concluded Respondent has the ability to pay the proposed penalty. If Respondent argues in its Prehearing Exchange that it is unable to pay all or part of the proposed penalty, Complainant will submit Ms. Smirnova’s report and financial documents provided by Respondent in its Rebuttal Prehearing Exchange. Complainant will also provide a narrative summary of Ms. Smirnova’s testimony about her evaluation of publicly available and otherwise provided financial information, and her determination regarding Respondent’s ability to pay the proposed penalty amount. Ms. Smirnova’s Resume is included as Exhibit 2 in this prehearing exchange.

II. 1(B). DOCUMENTS AND EXHIBITS INTENDED TO BE PRODUCED

CX No.	Title of Document	Date of Document
	Curriculum Vitae (CV) or Resume of Witnesses	
1	Kristin Keteles	
2	Ekaterina (Katya) Smirnova	
	Proof of Service	
3	USPS Return Receipt, Raymond Carey	Oct. 9, 2021
4	USPS Return Receipt, Jay Langenbahn	Oct. 7, 2021
5	October 10, 2019 Report	Oct. 10, 2019
6	Subpoena Duces Tecum	Oct. 10, 2019
7	Notice of Potential Violation and Opportunity to Confer, Intent to File Administrative Complaint against Windows Direct of Cincinnati, Inc.	September 2, 2020

	Requests for Financial Information	
8	Email to Attorney for Respondent	Oct. 8, 2020
9	Letter to Attorney for Respondent	Aug. 11, 2020
10	Letter to Attorney for Respondent	Sept. 2, 2021
	850 Old Ludlow Ave, Cincinnati OH 45220	
11	Renovation Contract	Aug. 21, 2019
12	Renovation Checklist	Dec. 3, 2019
	1753 Wickham Place, Cincinnati, OH 45214	
13	Renovation Contract	Nov. 1, 2016
14	Renovation Checklist	Feb. 1, 2017
	705 Carlisle Ave, Hamilton, OH 45013	
15	Renovation Contract	Mar. 20, 2018
16	Renovation Checklist	Apr. 19, 2018
	2022 Grand Ave, Middletown, OH 45044	
17	Renovation Contract	Dec. 27, 2017
18	Renovation Checklist	Feb. 9, 2018
	11391 Rose Lane, Cincinnati, OH 45246	
19	Renovation Contract	Mar. 6, 2018
20	Renovation Checklist	
	6657 Kirkland Drive, Cincinnati, OH 45224	
21	Renovation Contract	Mar. 13, 2018
22	Renovation Checklist	
	4334 Floral Ave, Cincinnati, OH 45212	
23	Renovation Contract	Oct. 25, 2016
24	Renovation Checklist	Dec. 28, 2016
	4317 Ashland Ave, Cincinnati, OH 45212	
25	Renovation Contract	Oct. 27, 2016
26	Renovation Checklist	Jan. 17, 2017
	646 Sutton Rd, Cincinnati, OH 45230	
27	Renovation Contract	Mar. 17, 2017
28	Renovation Checklist	
	4001 Ivanhoe Ave, Norwood, OH 45212	
29	Renovation Contract	Oct. 20, 2017
30	Renovation Checklist	
	2421 Vera Ave, Cincinnati, OH 45237	
31	Renovation Contract	Feb. 26, 2018
32	Renovation Checklist	
	3426 Wabash Ave, Cincinnati, OH 45207	
33	Renovation Contract	Apr. 18, 2018
34	Renovation Checklist	
	113 Glenwood Ave, Cincinnati, OH 45217	
35	Renovation Contract	Aug. 7, 2018
36	Renovation Checklist	Oct. 15, 2018
	939 Tiffin Ave, Hamilton, OH 45015	
37	Renovation Contract	Mar. 13, 2019

38	Renovation Checklist 2607 Harrison Ave, Cincinnati, OH 45211	Apr. 23, 2019
39	Renovation Contract	Oct. 13, 2017
40	Renovation Checklist 1122 Omena Place, Cincinnati, OH 45230	
41	Renovation Contract	Jun. 24, 2019
42	Renovation Checklist 535 Central Ave, Hamilton, OH 45011	Aug. 2016
43	Renovation Contract	Oct. 22, 2016
44	Renovation Checklist 7995 Nieman Dr, Cincinnati, OH 45224	Feb. 18, 2019
45	Renovation Contract	Jul. 31, 2019
46	Renovation Checklist	Sept. 25, 2019
	Certifications	
47	Christopher Brown Initial Renovator Certification	Oct. 21, 2019
48	Windows Direct USA Initial Firm Certification	Dec. 23, 2019
49	Sample Renovation Recordkeeping Checklist	
50	Lead-Safe Certified Guide to Renovate Right Pamphlet	Sept. 2011
51	<i>Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule</i>	August 19, 2010
52	<i>Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy</i>	December 2007
53	<i>Memorandum: Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule</i>	January 15, 2020
54	<i>Memorandum: Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action</i>	June 29, 2015
55	EPA Lead-Based Paint Program Frequent Questions	March 22, 2018
56	Website: <i>Locate Certified Renovation and Lead Dust Sampling Technician Firms</i> , accessed December 14, 2021	
57	Website: <i>Lead Safety Documents and Outreach Materials</i> , accessed December 14, 2021	
58	Website: <i>Renovation, Repair and Painting (RRP) Program: Consumers</i> , accessed December 14, 2021	
59	Website: <i>EPA/HUD Model Renovator Training Course</i> , accessed December 14, 2021	
60	Lead Safety for Renovation, Repair, and Painting Model Certified Renovator Initial Training Course – Instructor Manual, accessed December 14, 2021	
61	Lead Safety for Renovation, Repair, and Painting Model Certified Renovator Initial Training Course – Student Manual, accessed December 14, 2021	

62	<i>Hazards of Lead to Children and the Importance of Lead Safe Work Practices to Reduce Exposure</i> , prepared by Dr. Kristin A. Keteles	December 15, 2021
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III. 1(C). AMOUNT OF TIME NEEDED; INTERPRETER

Complainant estimates that it will need approximately 2 to 3 days to present its direct case, not including time for Respondent’s cross-examination of witnesses. Complainant does not request any translation services.

IV. 2(A). DOCUMENTATION SHOWING SERVICE OF COMPLAINT

Complainant’s Exhibits 3 and 4 are documentation showing that Respondent’s registered agent, Mr. Raymond Chris Carey, and Respondent’s counsel, Mr. Jay R. Langenbahn, were served with copies of the Complaint and other required documents via certified mail, return receipt requested, on October 9, 2021 and October 7, 2021, respectively, in accordance with Section 22.5(b)(1) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1).

V. 2(B). NARRATIVE STATEMENTS EXPLAINING THE FACTUAL AND/OR LEGAL BASES FOR THE ALLEGATIONS DENIED OR OTHERWISE NOT ADMITTED IN RESPONDENT’S ANSWER

Paragraphs 4 – 31. Respondent claims that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of these paragraphs. Paragraphs 4 through 31 of the Complaint lay out information contained in TSCA and the Code of Federal Regulations. As such, Complainant asks that this Tribunal take judicial notice of TSCA, 15 U.S.C. §§ 2601 et. al., 42 U.S.C. § 4851, 40 C.F.R. Part 745, and associated Federal Register notices pertaining to the rulemaking, and 40 C.F.R. Part 19.

Paragraph 32. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 32 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 35. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that EPA received a tip/complaint regarding Windows Direct USA’s compliance with Sections 406 and 407 of TSCA. Complainant will establish the truth of Paragraph 35 through the testimony of Ms. Calvo. Ms. Calvo will testify that on October 1, 2019, she received a tip/complaint regarding Windows Direct USA’s compliance with Lead Safe work practices.

Paragraph 36. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that an authorized EPA representative arrived at Respondent’s place of business, and presented his federal inspector credentials and a written notice of inspection to monitor Respondent’s compliance with Sections 406 and 407 of TSCA. Complainant will establish the truth of Paragraph 36 through the testimony of Mr. Paul Novak. Mr. Novak will testify that on October 7, 2019, between 2:25 P.M. and 2:32 P.M. EDT, Paul J.

Novak, Credentialed U.S. EPA Inspector, arrived at Respondent's place of business to conduct an unannounced inspection. Complainant will further establish that Mr. Novak provided his credentials to the employee who greeted him at the facility. Complainant will establish the truth of these assertions through the introduction of the following evidence:

- Complainant's Exhibit 5 – October 10, 2019 Report
- Testimony of Mr. Novak

To the extent Respondent only denies the receipt of a written notice of inspection, Complainant acknowledges that Mr. Novak did not have the opportunity to issue a written notice of inspection prior to being denied access to company records at Respondent's Blue Ash, Ohio office.

Paragraph 37. Respondent denies that, on October 7, 2019, Respondent's representative, Chris Carey, did not permit EPA access to review or copy records necessary for Respondent to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, and Section 407 of TSCA. Complainant will establish that, during Mr. Novak's October 7, 2019 inspection, Respondent's Operations Manager, Ryan Eger, denied Mr. Novak access to company records. Complainant will further establish that Ms. Estrella Calvo and an EPA attorney spoke to Mr. Carey via telephone, and Mr. Carey again denied EPA access to conduct an inspection for the purpose of reviewing or copying records. Complainant will establish the truth of these assertions through the following testimony:

- Testimony of Mr. Novak
- Testimony of Ms. Calvo

Paragraph 48. Respondent denies that each of the 18 residential properties identified by EPA was constructed prior to 1978, and therefore each unit is "target housing" as defined in 40 C.F.R. § 745.103. 40 C.F.R. § 745.103 defines "target housing" as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling." 40 C.F.R. § 745.103 defines "housing for the elderly" as "communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy." Respondent, however, admits the allegations in paragraph 47 of the Complaint, namely that, at each of the 18 properties, Respondent performed or directed performance of work at residential housing built prior to 1978. As such, Complainant assumes that Respondent admits that each residential property was constructed prior to 1978. However, in the event that this is not the case, Complainant will establish the truth of Paragraph 48 through the testimony of Ms. Saldivar. Ms. Saldivar will testify that she used the property value assessment websites from the residential properties' respective counties to determine that the residence on each property was constructed prior to 1978.

Complainant has no reason to believe that these residential properties were housing for the elderly or persons with disabilities.

VIOLATIONS

Count 1 – Failure or Refusal to Permit the EPA Representative Entry or Inspection

Paragraph 49. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 49 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 50. Respondent denies that Respondent’s representative refused to permit an EPA representative access to review or copy records necessary for Respondent to demonstrate compliance as required by 40 C.F.R. Part 745, Subpart E and Section 407 of TSCA during an inspection. This denial is addressed in response to Paragraph 37, above.

Paragraph 51. Respondent denies that its failure or refusal to permit the EPA representative access to review or copy records necessary for Respondent to demonstrate compliance as required by 40 C.F.R. Part 745, Subpart E and Section 407 of TSCA, constitutes a violation under 40 C.F.R. §745.87(c) and Sections 11 and 15 of TSCA, 15 U.S.C. §§ 2610 and 2689. Section 11 of TSCA, 15 U.S.C. § 2610 permits EPA to inspect “any establishment, facility or other premises in which chemical substances, mixtures, or products subject to subchapter IV are manufactured, processed, stored, or held before or after their distribution in commerce” Section 15 of TSCA, 15 U.S.C. § 2689, makes it “unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.”

Further, 40 C.F.R. § 745.87(e) authorizes EPA to “conduct inspections and issue subpoenas” at renovations covered by 40 C.F.R. Part 745. 40 C.F.R. § 745.87(c) states that “failure or refusal to permit entry or inspection as required by 40 C.F.R. 745.87 and TSCA section 11 is a violation of sections 15 and 409.” As established in the response to paragraph 37, above, Respondent’s agents twice refused to permit an authorized EPA representative to enter and inspect the facility in violation of 40 C.F.R. § 745.87(c) and Sections 11 and 15 of TSCA, 15 U.S.C. §§ 2610 and 2689. Complainant will establish the truth of these assertions through the introduction of the following evidence:

- Testimony of Mr. Novak
- Testimony of Ms. Calvo
- Complainant’s Exhibit 5 – October 10, 2019 Report

Count 2 – Failure to Obtain Firm Certification

Paragraph 52. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 52 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 54. Respondent denies that it was not registered as a certified firm under EPA at the time of the 18 renovations identified by EPA, and did not qualify for an exemption under 40 C.F.R. § 745.82(b). Respondent does not identify any exemptions that apply to its

situation, and Complainant is unaware of any facts that would indicate that any of the 18 renovations were emergency renovations. The 18 renovations identified by EPA took place between October 22, 2016 and June 24, 2019. Complainant will show that Respondent was not a certified firm during the period of October 22, 2016 through June 24, 2019, through the introduction of the following evidence:

- Testimony of Mr. Novak
- Complainant's Exhibit 48 – Windows Direct USA Initial Firm Certification

Paragraph 55. Respondent denies that its failure to be registered as a certified firm before performing each of the 18 renovations identified by EPA constitutes a violation under 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii), and 15 U.S.C. § 2689. 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii) require firms that perform renovations for compensation after April 22, 2010 to apply to EPA for certification to perform renovations or dust sampling, and to be re-certified every five years to maintain certification.

In response to paragraph 34, Respondent admits that it was a “firm” at all times relevant to the Complaint. Complainant will show that Respondent received compensation for the 18 renovations identified by EPA, through introduction of the following evidence:

- Complainant's Exhibit 35 – Renovation Contract, 113 Glenwood Ave
- Complainant's Exhibit 43 – Renovation Contract, 535 Central Ave
- Complainant's Exhibit 27 – Renovation Contract, 646 Sutton Rd.
- Complainant's Exhibit 15 – Renovation Contract, 705 Carlisle
- Complainant's Exhibit 11 – Renovation Contract, 850 Old Ludlow
- Complainant's Exhibit 37 – Renovation Contract, 939 Tiffin Ave
- Complainant's Exhibit 41 – Renovation Contract, 1122 Omena Pl.
- Complainant's Exhibit 13 – Renovation Contract, 1753 Wickham Pl.
- Complainant's Exhibit 17 – Renovation Contract, 2022 Grand Ave
- Complainant's Exhibit 31 – Renovation Contract, 2421 Vera
- Complainant's Exhibit 39 – Renovation Contract, 2602 Harrison Ave.
- Complainant's Exhibit 33 – Renovation Contract, 3426 Wabash Ave.
- Complainant's Exhibit 29 – Renovation Contract, 4001 Ivanhoe Ave.
- Complainant's Exhibit 25 – Renovation Contract, 4317 Ashland Ave.
- Complainant's Exhibit 23 – Renovation Contract, 4334 Floral Ave.
- Complainant's Exhibit 21 – Renovation Contract, 6654 Kirkland Dr.
- Complainant's Exhibit 45 – Renovation Contract, 7995 Nieman Dr.
- Complainant's Exhibit 19 – Renovation Contract, 11391 Rose Ln.

As described in relation to paragraph 54, above, Respondent failed to be registered as a certified firm before performing each of the 18 renovations identified by EPA. Section 15 of TSCA, 15 U.S.C. § 2689, makes it “unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.” As such, Respondent's failure to be registered as a certified firm before performing each of the 18

renovations identified by EPA constitutes a violation under 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii), and 15 U.S.C. § 2689.

Counts 3 and 4 – Failure to Obtain Written Acknowledgment from Adult Occupants of Two Multi-Family Dwellings

Paragraph 56. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 56 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 57. Respondent denies that it performed or directed performance of renovations in two locations of multi-family target housing identified by EPA and failed to obtain from each adult occupant the written acknowledgment that each occupant had received the pamphlet, or obtain for each location a certificate of mailing at least seven days prior to each renovation.

In response to paragraph 46, Respondent admits that at each of the 18 addresses identified by EPA, including those addresses identified in the allegations in paragraph 57, Respondent performed or directed performance of a renovation as defined in 40 C.F. R. § 745.83. As such, although Respondent does not identify which portion of this paragraph specifically is denied, Complainant infers that Respondent denies either the statement that these two properties are multi-family target housing, or the failure to obtain written acknowledgment or certificate of mailing prior to each renovation.

Complainant will establish that 705 Carlisle Avenue is target housing and that 113 Glenwood Avenue is multi-family target housing. 40 C.F.R. § 745.103 defines “target housing” as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.” As discussed in relation to paragraph 48, Complainant will show that these properties are target housing through the introduction of the following evidence:

- Complainant’s Exhibit 15 – Renovation Contract, 705 Carlisle Ave
- Complainant’s Exhibit 35 – Renovation Contract, 113 Glenwood Ave

Complainant will establish that Respondent failed to obtain written acknowledgement or certificate of mailing prior to each renovation. In Complainant’s October 10, 2019 TSCA Subpoena duces tecum, Complainant requested that Respondent provide, for each property for which a customer entered into a contract with it, copies of, among other things, all signed and dated acknowledgments of a receipt of a pamphlet by the owner of the property where the work was performed, or copies of all certificates of mailing, among other things. Respondent failed to provide Complainant with signed and dated acknowledgments or copies of certificates of mailing for either of these properties. Complainant will show the truth of this assertion through the introduction of the following evidence:

- Complainant’s Exhibit 6 – Subpoena Duces Tecum

To the extent Respondent denies only the statement that 705 Carlisle Ave is multi-family target housing, Complainant acknowledges that this property is single-family target housing. However, this is a rental property, and was not occupied by the owner at the time the renovation was done.

Paragraph 58. Respondent denies that its failure to obtain from each adult occupant of the four residential properties identified by EPA, the written acknowledgment that each occupant had received the pamphlet, or obtain for each location a certificate of mailing at least seven days prior to each renovation, constitutes two violations of 40 C.F.R. §745.84(a)(2)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

40 C.F.R. § 745.84(a)(2)(i) requires a firm performing a renovation to provide an adult occupant of the unit (if the owner is not the occupant) with the information pamphlet and obtain a written acknowledgment from an adult occupant certifying that a pamphlet has been delivered. Alternatively, a firm can comply with 40 C.F.R. § 745.84(a)(2)(ii) by obtaining a certificate of mailing at least 7 days prior to the renovation. In response to paragraphs 34 and 46, Respondent admits both that it was a “firm” during the time these renovations were conducted, and that the work done at these properties is considered “renovation.” Further, Complainant will show that both properties were “target housing,” as defined by 40 C.F.R. § 745.103, through the introduction of evidence provided in support of paragraph 57. As discussed in relation to paragraph 57, Respondent was unable to provide Complainant with signed and dated acknowledgments or certificates of mailing to the occupants of 705 Carlisle Ave, Hamilton, Ohio and 113 Glenwood Ave, Cincinnati, Ohio.

15 U.S.C. § 2689 makes it unlawful for any person to fail or refuse to comply with a provision of TSCA or with any rule or order issued under TSCA. Respondent’s failure to obtain signed and dated acknowledgments or certificates of mailing from the non-owner occupants at two addresses at which it conducted a renovation constitutes two violations of 40 C.F.R. § 745.84(a)(2)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

To the extent Respondent denies only the statement that these violations occurred at four residential properties, Complainant acknowledges that, as stated in paragraph 57 of the complaint, these violations occurred at only two residential properties.

Counts 5, 6, and 7 – Failure to Ensure that all Individuals Working on Behalf of the Firm are either Certified Renovators or Trained by a Certified Renovator

Paragraph 59. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 59 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 61. Respondent denies that it performed or directed performance of renovations in three locations of single-family target housing identified by EPA, and failed to ensure that all individuals working on behalf of the firm were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

Respondent admits the allegations contained in paragraph 46, namely, that at each of the 18 addresses identified by EPA, including those addresses identified in the allegations in paragraph 61, Respondent performed or directed performance of a renovation as defined in 40 C.F. R. § 745.83. Respondent has denied that the 18 properties identified by EPA are target housing. As discussed in relation to paragraph 48, above, Complainant will show that all 18 homes, including those identified in this paragraph 61, are target housing as defined in 40 C.F.R. § 745.103.

Complainant will show that Respondent failed to ensure that all individuals working on behalf of the firm were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. According to records kept by Respondent, the renovator assigned to 705 Carlisle Avenue, Hamilton, Ohio, 4334 Floral Avenue, Cincinnati, Ohio, and 2607 Harrison Avenue, Cincinnati, Ohio, was Christopher Brown. The contract dates for these properties are March 20, 2018, October 25, 2016, and October 13, 2017, respectively. Respondent has provided one certificate identifying Christopher Brown as a certified renovator per 40 C.F.R. § 745.225 as of October 21, 2019, over a year after the last of these three renovations was completed. Complainant will show the truth of these assertions through the introduction of the following evidence:

- Complainant's Exhibit 15 – Renovation Contract for 705 Carlisle Avenue
- Complainant's Exhibit 23 – Renovation Contract for 4334 Floral Avenue
- Complainant's Exhibit 39 – Renovation Contract for 2607 Harrison Avenue
- Complainant's Exhibit 47 – Renovator Certification for Christopher Brown

Paragraph 62. Respondent denies that its failure to ensure that all individuals working on behalf of the firm on three properties identified by EPA were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, constitutes three violations of 40 C.F.R. § 745.89(d)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689. 40 C.F.R. § 745.89(d)(1) requires all individuals performing renovation activities on behalf of a certified firm to be either certified renovators or trained by certified renovators in accordance with 40 C.F.R. § 745.90. Among other things, 40 C.F.R. § 745.90 requires a certified renovator to take an accredited course and to complete refresher courses within 5 years of the initial course. As discussed in relation to paragraph 61, above, Complainant will show that Christopher Brown, who performed three renovations on target housing between October 2016 and March 2018, was not a certified renovator until October 21, 2019. Further, in response to EPA's TSCA Subpoena, Respondent provided no information about a certified renovator assigned to work on behalf of the firm at these three properties. 40 C.F.R. § 745.87(a) states that failure or refusal to comply with any provision of Subpart E is a violation of TSCA Section 409, 15 U.S.C. 2689. As such, Respondent's failure to ensure that the individual performing the renovations on these three properties was a certified renovator constitutes three violations of 40 C.F.R. § 745.89(d)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 8 to 13 – Failure to Retain All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E

Paragraph 63. Complainant does not believe that a response to Respondent’s simultaneous admission and denial of Paragraph 63 is necessary, however to the extent that it may be, Complainant incorporates all relevant preceding arguments as though argued herein.

Paragraph 64. Respondent denies that, in six contracted renovations identified by EPA, it failed to retain the records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the six contracted renovations. Specifically, Respondent denies that it failed to retain documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), for three contracted renovations identified by EPA.

For the renovation conducted at 1753 Wickham Place, Cincinnati, Ohio, Complainant will show that Respondent’s renovator, Nick Sapp, did not check off that he had done the post-renovation cleaning verification, and did not describe the results, including the number of wet and dry cloths used, as required by the regulations.

For the renovation done at 535 Central Ave, Hamilton, Ohio, Complainant will further show that Respondent’s renovator, Mr. Sapp, did not check off that he had done the post-renovation cleaning verification, and did not describe the results, including the number of wet and dry cloths used, as required by the regulations.

Finally, for the renovation done at 850 Old Ludlow Ave, Cincinnati, Ohio, Complainant will show that Respondent’s renovator, Tony Ditullio, did not check off that he had done the post-renovation cleaning verification, and did not describe the results, including the number of wet and dry cloths used, as required by the regulations.

Complainant will show the truth of these assertions through the introduction of the following evidence:

- Complainant’s Exhibit 14 – Renovation Checklist for 1753 Wickham Place
- Complainant’s Exhibit 44 – Renovation Checklist for 535 Central Ave
- Complainant’s Exhibit 12 – Renovation Checklist for 850 Old Ludlow Ave.

Respondent further denies that it failed to retain and provide a copy of the assigned certified renovator’s training certificate for three contracted renovations identified by EPA. As discussed in relation to paragraphs 61 and 62, above, Christopher Brown performed the renovations at the following locations: 705 Carlisle Avenue, Hamilton, Ohio; 4334 Floral Avenue, Cincinnati, Ohio; and 2607 Harrison Avenue, Cincinnati, Ohio. These renovations were performed between October 2016 and March 2018, and Respondent provided a certificate of completion of certified renovator training dated October 21, 2019 for Mr. Brown. Respondent was unable to provide a certificate of completion of certified renovator training for any time prior to October 21, 2019 for Mr. Brown. As such, Respondent failed to retain and provide a copy of the assigned certified renovator’s training certificate. Complainant will show the truth of these assertions through the introduction of the following evidence:

- Complainant’s Exhibit 15 – Renovation Contract for 705 Carlisle Avenue
- Complainant’s Exhibit 23 – Renovation Contract for 4334 Floral Avenue
- Complainant’s Exhibit 39 – Renovation Contract for 2607 Harrison Avenue
- Complainant’s Exhibit 47 – Renovator Certification for Christopher Brown

Paragraph 65. Respondent denies that its failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for a period of three years following the completion of six contracted renovations identified by EPA constitutes six violations of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

40 C.F.R. § 745.86 requires firms performing renovations to retain and make available to EPA all records necessary to demonstrate compliance with Subpart E for a period of three years following completion of the renovation. 40 C.F.R. § 745.86(b)(6) specifically requires, among other things, firms to maintain documentation that a certified renovator was assigned to the project and documentation that the certified renovator performed the post-renovation cleaning verification. Respondent has admitted both the assertion that Respondent was a “firm” at all times relevant to the complaint, and that all 18 renovations identified by EPA were “renovations” as defined by 40 C.F.R. § 745.83.

As outlined in relation to paragraph 64, above, Respondent failed to retain and make available documentation to show that a certified renovator was assigned to each of three renovation projects. These three renovation projects, at 705 Carlisle Avenue, Hamilton, Ohio, 4334 Floral Avenue, Cincinnati, Ohio, and 2607 Harrison Avenue, Cincinnati, Ohio, were performed between October 25, 2016 and March 20, 2018. EPA first requested records during its attempted inspection on October 7, 2019, less than three years after the first of these renovations was performed. On October 10, 2019, EPA issued a TSCA Subpoena for all of Respondent’s records of renovation activities for the period of October 7, 2016 through October 7, 2019, requiring Respondent to maintain all records responsive to the TSCA Subpoena.

Respondent further failed to retain and make available documentation to show that the certified renovator performed the post-renovation cleaning verification in three renovation projects. These three renovation projects, at 1753 Wickham Place, Cincinnati, Ohio, 535 Central Ave, Hamilton, Ohio, and 850 Old Ludlow Ave, Cincinnati, Ohio, were performed between October 22, 2016 and August 21, 2019. EPA first requested records during its attempted inspection on October 7, 2019, and required Respondent to maintain all responsive documents in the October 10, 2019 TSCA Subpoena, less than three years after the first of these renovations was performed.

40 C.F.R. § 745.87(a) makes the failure or refusal to comply with any provision of Subpart E a violation of TSCA Section 409, 15 U.S.C. § 2689. As such, Respondent’s failure to retain or make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of six contracted renovations identified by EPA constitutes six violations of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Paragraph 66. Respondent denies that on September 2, 2020, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of the Residential Property Renovation Rule and that the complaint would seek a civil penalty. Respondent further denies that EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. Respondent denies that EPA asked Respondent to submit specific financial documents if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty.

Respondent has admitted the allegations in paragraph 67, namely that, on September 23, 2020, Respondent received EPA's September 2, 2020 letter. Complainant is, therefore, uncertain what exactly Respondent denies regarding this paragraph. Nevertheless, Complainant will establish the truth of each of these assertions using the following evidence:

- Complainant's Exhibit 7 – Notice of Potential Violation and Opportunity to Confer, Intent to File Administrative Complaint against Windows Direct of Cincinnati, Inc.
- Complainant's Exhibit 8 – Email to Attorney for Respondent dated October 8, 2020
- Complainant's Exhibit 9 – Letter to Attorney for Respondent dated August 11, 2021
- Complainant's Exhibit 10 – Letter to Attorney for Respondent dated September 2, 2021

Paragraph 69. Respondent denies that it has not provided any financial documents related to its ability to pay the proposed penalty. At the time of the filing of the Complaint, and at the time Respondent submitted its Answer, Respondent had not provided any financial documentation pertaining to the Respondent's ability to pay. However, on October 29, 2021, Respondent submitted tax returns for 2018, 2019, and 2020, and has complied with additional requests for financial information.

PROPOSED CIVIL PENALTY

Paragraph 70. Respondent denies paragraph 70, which states that Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in the complaint, and lays out the proposed penalty for each count. This is not an allegation, but Complainant understands Respondent's denial to be a denial that Respondent should be assessed a penalty. Complainant will demonstrate that a penalty is appropriate in this case through the use of testimony, as described in Section I of this document, and the exhibits listed in Section II of this document. Complainant's determination of the penalty amount is described in detail in Section VI of this document.

Paragraph 71. Respondent denies that it has an ability to pay a penalty of \$104,372. At the time the Complaint was filed in this matter, Complainant reviewed available information, and concluded Respondent had an ability to pay the proposed penalty. Complainant will establish Respondent's ability to pay using the following evidence:

- Testimony of Ms. Saldivar

Subsequent to filing its Answer, Respondent submitted financial documentation which has been reviewed by Complainant's financial expert. If Respondent argues it has an inability to pay all or part of the proposed penalty, Complainant will rebut Respondent's inability to pay argument through the expert testimony of Ms. Smirnova and her expert report.

Paragraph 72. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that, in determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account 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 factors as justice may require. Complainant asks that this Tribunal take judicial notice of Section 16 of TSCA, specifically 15 U.S.C. § 2615(a)(2)(B), which states the foregoing.

Paragraph 73. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73. Paragraph 73 states that EPA calculates penalties by applying its *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* dated August 19, 2010 (Response Policy), the *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007 (ERPP), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation. The Response Policy and ERPP provide a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing. As previously stated, Complainant asks that this Tribunal take judicial notice of 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*. Complainant will establish the truth of the remainder of this paragraph using the following evidence:

- Complainant's Exhibit 51 – *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* dated August 19, 2010
- Complainant's Exhibit 52 - *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007
- Complainant's Exhibit 53 – *Memorandum: Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and*

VI. 2(C). FACTUAL INFORMATION AND SUPPORTING DOCUMENTATION RELEVANT TO THE ASSESSMENT OF A PENALTY

Estrella Calvo assigned Christina Saldivar to this case matter in December 2019, following EPA's October 7, 2019 attempt to conduct an inspection at Respondent's office in Blue Ash, Ohio, and EPA's receipt of Respondent's responsive documentation to EPA's October 10, 2019 TSCA Subpoena. Ms. Saldivar's primary responsibility as related to this case matter is to identify Respondent's compliance with the RRP Rule. Ms. Saldivar reviewed the information that was currently available to EPA, including the EPA October 10, 2019 report memorializing the inspection denial events on October 7, 2019, Respondent's responsive documentation to EPA's October 10, 2019 TSCA Subpoena related to renovation activities conducted at 35 residential properties performed for compensation by Respondent, and additional correspondence from Respondent.

The 35 residential properties were as follows: (1) 305 Marietta Street, Bremen, Ohio 43107; (2) 1553 Virginia Ave, Columbus, Ohio 43212; (3) 749 Collingwood Ave, Columbus, Ohio 43213; (4) 224 E 7th Avenue, Columbus, Ohio 43201; (5) 114 High Street, Cincinnati, Ohio 45202; (6) 850 Old Ludlow Ave, Cincinnati Ohio 45220; (7) 504 Kaldy Street, Cincinnati, Ohio 45211; (8) 1753 Wickham Place, Cincinnati, Ohio 45214; (9) 705 Carlisle Ave, Hamilton, Ohio 45013; (10) 1906 Hathaway, Unknown City, Ohio, Unknown Zip Code; (11) 2022 Grand Ave, Middletown, Ohio 45044; (12) 11391 Rose Lane, Cincinnati, Ohio 45246; (13) 6657 Kirkland Drive, Cincinnati, Ohio 45224; (14) 10831 Meadow Hawk Ct, Centerville, Ohio 45458 (15) 10181 Waterford Ct, Covington, Kentucky 41015; (16) 3966 School Section Road, Cincinnati, Ohio 45211; (17) 9186 Yarmouth Drive, Cincinnati, Ohio 45140; (18) 2785 Afton Valley Ct, Maineville, Ohio 45039; (19) 1751 Tatum Lane, Hamilton, Ohio 45013; (20) 4334 Floral Ave, Cincinnati, Ohio 45212; (21) 4317 Ashland Ave, Cincinnati, Ohio 45212; (22) 646 Sutton Rd, Cincinnati, Ohio 45230; (23) 89 Taylor Ave, Ft. Thomas, Kentucky 41075; (24) 1540 Burney Lane, Cincinnati, Ohio 45230; (25) 4001 Ivanhoe Ave, Norwood, Ohio 45212 (26) 2421 Vera Ave, Cincinnati, Ohio 45237; (27) 1594 Parliament Ct, Fairfield, Ohio 45014; (28) 3426 Wabash Ave, Cincinnati, Ohio 45207; (29) 113 Glenwood Ave, Cincinnati, Ohio 45217; (30) 939 Tiffin Ave, Hamilton, Ohio 45015; (31) 2607 Harrison Ave, Cincinnati, Ohio 45211; (32) 1122 Omena Place, Cincinnati, Ohio 45230; (33) Unknown Renovation Address, Unknown City, Ohio, Unknown Zip Code; (34) 535 Central Ave, Hamilton, Ohio 45011; and (35) 7995 Nieman Dr, Cincinnati, Ohio 45224.

Respondent's responsive documentation indicated that 5 renovated residential properties were not subject to the RRP Rule because no painted surfaces were disturbed.

Ms. Saldivar determined that the following 5 renovated residential properties were not subject to the RRP Rule due to Respondent's representation that its activities did not disturb painted surfaces: (1) 114 High Street; (2) 1906 Hathaway Street; (3) 1594 Parliament Court; (4) Unknown Address; and (5) 89 Taylor Avenue.

In addition to her review of information currently available to EPA regarding this case matter, Ms. Saldivar also conducted additional research to verify each of the 35 renovated residential properties' built year from property value assessment websites from the residential properties' respective counties in the State of Ohio. Based upon Ms. Saldivar's research and review, it appeared that the following 5 renovated residential properties were built post-1978 and are not considered to be target housing: (1) 10831 Meadow Hawk Court; (2) 10181 Waterford Court; (3) 9186 Yarmouth Drive; (4) 2785 Afton Valley Court; and (5) 1751 Tatum Lane. Based upon Ms. Saldivar's research and review, it appeared the remaining 25 renovated residential properties were built prior to 1978 and are target housing.

Respondent is a private company with limited publicly available company and financial information. Based upon Ms. Saldivar's research and review of available company and financial information obtained in 2020, Respondent appeared to have generated up to \$990,000 in annual sales in January 2020, and employed over five employees.

Ms. Saldivar developed an appropriate gravity-based penalty calculation, accounting for inflation in accordance with EPA's policies and guidances, and based upon Respondent's responsive documentation, Respondent's potential size and income.

The appropriate gravity-based penalty calculation with inflation was \$125,496 for these violations.

After Ms. Saldivar received her management's approval, EPA issued a *Notice of Potential Violation and Opportunity to Confer* letter to Respondent on September 2, 2020.

A few months following the issuance of the *Notice of Potential Violation and Opportunity to Confer* letter, Respondent provided factual information stating it complied with certain requirements of the RRP Rule at 3 renovated residential properties, and provided information showing it did not comply with certain requirements of the RRP Rule at 3 separate renovated residential properties. Ms. Saldivar therefore revised the gravity-based penalty calculation based on this information. The appropriate gravity-based penalty calculation with inflation was revised to \$104,372.

Ms. Saldivar concluded that there was sufficient evidence to support 13 violations that Respondent committed, as follows: (Count 1) Failure or refusal to permit EPA entry or inspection on October 7, 2019, in violation of 40 C.F.R. § 745.87(c); (Count 2) Failure to obtain initial firm certification from EPA prior to offering, performing or claiming to perform the 18 renovations for compensation at target housing, in violation of 40 C.F.R. § 745.81(a)(2)(ii); (Count 3) Failure to obtain a written acknowledgement that an adult occupant (if the owner does not occupy the dwelling unit) received the pamphlet, or failure to obtain a certificate of mailing at least seven days prior to the renovation at 705 Carlisle Avenue when performing the contracted renovation activities before or on March 20, 2018, in violation of 40 C.F.R. § 745.84(a)(2); (Count 4) Failure to obtain a written acknowledgement that an adult occupant received the pamphlet, or failure to obtain a certificate of mailing at least seven days prior to the renovation at 113 Glenwood Avenue when performing the contracted renovation activities before or on August 7, 2018, in violation of 40 C.F.R. § 745.84(a)(2); (Count 5) Failure to retain

documentation that a certified renovator performed the post-renovation cleaning verification for 850 Old Ludlow Avenue on or after August 12, 2019, in violation of 40 C.F.R. § 745.86; (Count 6) Failure to retain documentation that a certified renovator performed the post-renovation cleaning verification for 1753 Wickham Place on or after November 1, 2016, in violation of 40 C.F.R. § 745.86; (Count 7) Failure to retain documentation that a certified renovator performed the post-renovation cleaning verification for 535 Central Avenue on or after October 22, 2016, in violation of 40 C.F.R. § 745.86; (Count 8) Failure to retain a copy of the certified renovator's training certificate for the renovation performed at 705 Carlisle Avenue on or after March 20, 2018, in violation of 40 C.F.R. § 745.86; (Count 9) Failure to retain a copy of the certified renovator's training certificate for the renovation performed at 4334 Floral Avenue on or after October 26, 2016, in violation of 40 C.F.R. § 745.86; (Count 10) Failure to retain a copy of the certified renovator's training certificate for the renovation performed at 2607 Harrison Avenue on or after October 13, 2017, in violation of 40 C.F.R. § 745.86; (Count 11) Failure to ensure that all individuals performing the renovation activities on behalf of Respondent during the renovation at 705 Carlisle Avenue on March 20, 2018 were either certified renovators or trained by a certified renovator, in violation of 40 C.F.R. § 745.89(d)(1); (Count 12) Failure to ensure that all individuals performing the renovation activities on behalf of Respondent during the renovation at 4434 Floral Avenue on October 26, 2016 were either certified renovators or trained by a certified renovator, in violation of 40 C.F.R. § 745.89(d)(1); and, (Count 13) Failure to ensure that all individuals performing the renovation activities on behalf of Respondent during the renovation at 2607 Harrison on October 13, 2017 were either certified renovators trained by a certified renovator, in violation of 40 C.F.R. § 745.89(d)(1).

Subsequent to Respondent's filing of an Answer, Respondent provided its federal income tax returns and other financial information to EPA for EPA to conduct an ability to pay the penalty analysis. EPA's financial expert reviewed the financial information referenced in Paragraph 18, and determined that Respondent has the ability to pay the entire penalty of \$104,372.

VII. 2(D). EPA GUIDANCE DOCUMENTS AND/OR POLICIES COMPLAINANT HAS RELIED UPON WITH REGARD TO THE ALLEGATIONS

Complainant has relied on the following EPA guidance documents, policies, and preambles to regulations with regard to the allegations set forth in the Complaint:

- Complainant's Exhibit 48 – Sample Renovation Recordkeeping Checklist
- Complainant's Exhibit 50 – Lead-Safe Certified Guide to Renovate Right Pamphlet
- Complainant's Exhibit 55 – EPA Lead-Based Paint Program Frequent Questions, March 22, 2018
- PL 102-550, Oct. 28, 1992, 106 Stat 3672, codified in 42 U.S.C. § 4851
- 63 Fed. Reg. 29908, June 1, 1998

VIII. 2(E). DETAILED EXPLANATION OF THE FACTORS CONSIDERED AND METHODOLOGY UTILIZED IN CALCULATING THE PROPOSED PENALTY

After concluding that there was sufficient evidence to support the identified violations of the RRP Rule, Ms. Saldivar drafted a penalty calculation in accordance with the following EPA guidance policies: *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule* (Revised April 2013) (LBP Consolidated ERP), *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* (December 2007) (Section 1018 ERP), and the *2020 Penalty Policy Inflation Memo and 2020 Penalty Inflation Rule* (2020 Inflation Memo).

The LBP Consolidated ERP states that in order to determine the appropriate penalty amount, the following steps must be followed: (1) identify the number of independently assessable violations; (2) determine Respondent’s economic benefit amount from non-compliance; (3) determine the gravity-based penalty based on each violation’s levels of nature, circumstance, and extent of harm; (4) select the appropriate penalty amounts in the ERP’s gravity-based penalty matrices; and, (5) adjust the gravity-based penalty upward or downward based on Respondent’s ability to pay, history of prior violations, degree of culpability, and other matters as justice may require.

First, Ms. Saldivar determined that Respondent had committed 13 independently assessable violations as previously identified, above.

Second, Ms. Saldivar determined that Respondent did not obtain any significant economic benefit from non-compliance due to negligible cost of complying with the RRP Rule (i.e., the cost of obtaining renovation firm certification and renovator certifications).

Third, Ms. Saldivar determined that the LBP Consolidated ERP applied to all of Respondent’s violations at issue in this matter, except for violations of 40 C.F.R. § 745.84(a)(2), pertaining to Respondent’s failure to obtain a written acknowledgement that an adult occupant received the pamphlet, or failure to obtain a certificate of mailing at least seven days prior to performing the contracted renovations at 705 Carlisle Avenue and 113 Glenwood Avenue (Count 3 and Count 4).

In accordance with the 2020 Inflation Memo footnote #30, the violations referenced in paragraph 25 are to be assessed by using the Section 1018 ERP due to having the same deficiency (i.e., “fail to provide and document receipt of certain information related to the presence or risk of lead-based paint”). Ms. Saldivar determined that the Section 1018 ERP applied to violations of 40 C.F.R. § 745.84(a)(2) referenced in paragraph 25, which was promulgated before the other regulations applicable in this matter.

Fourth, Ms. Saldivar determined each of the 13 independently assessable violations’ nature, circumstance, and extent of harm based on: Appendix A and Appendix B of the LBP Consolidated ERP for 11 independently assessable violations (Counts 1, 2, and 5 to 13); and

Appendix B of the Section 1018 ERP for the violations (Count 3 and Count 4) described in Paragraph 25, above.

For the violations (Counts 1, 2, and 5 to 13) to which the LBP Consolidated ERP is applicable, Ms. Saldivar evaluated the following factors:

1. Each violation's nature (i.e., hazard assessment or chemical control) and circumstance level (i.e., Levels 1 to 6) was determined in Appendix A of the LBP Consolidated ERP by identifying the respective nature and circumstance level for each specific violation.
2. According to Appendix A of the LBP Consolidated ERP, the following are the nature and circumstance levels for each identified violation: (Count 1) 2a; (Count 2) 3a; (Counts 5 to 7) 6a; (Counts 8 to 10) 6a; and (Counts 11 to 13) 3a.
3. Ms. Saldivar determined the extent of harm levels (i.e., Minor, Significant, and Major) by the information regarding the ages of occupants and the presence of pregnant women in the target housing in each renovation performed by Respondent, and information related to the size of Respondent.
4. According to Respondent's responsive documentation to EPA's October 10, 2019 Subpoena, and additional correspondence, Respondent: (1) did not meet the definition of a "self-employed renovator or very small firm" under the LBP Consolidated ERP's foot note #49; and (2) did not provide any factual information regarding the ages of the individuals or the presence of pregnant women residing in each target housing for the 18 renovations.
5. According to LBP Consolidated ERP, the following are the extent of harm levels for each identified violation: (1) Minor; (2) Major; and, Significant. A "significant" level is appropriate when, and was applied to Counts 5 to 13, because there is no knowledge of the age of the individuals or the presence of pregnant women residing in target housing at the time of each renovation.

For the violations (Count 3 and Count 4) to which the Section 1018 ERP is applicable, Ms. Saldivar evaluated the following factors:

1. Each violation's nature (i.e., hazard assessment) and circumstance level (i.e., Levels 1 to 6) was determined in Appendix B of the Section 1018 ERP by identifying the respective nature and circumstance level for each specific violation.
2. According to Appendix B of the Section 1018 ERP, the nature and circumstance levels for (Count 3) is 4b, and (Count 4) is 4b.
3. Ms. Saldivar determined the extent of harm levels (i.e., Minor, Significant, and Major) by the information regarding the ages of occupants and the presence of pregnant women in the target housing in each renovation performed by Respondent.

4. According to the Section 1018 ERP, the extent of harm levels for (Count 3) is Significant and (Count 4) is Significant. A “significant” level is appropriate when, and was applied to Counts 3 and 4, because there is no knowledge of the age of the individuals or the presence of pregnant women residing in target housing at the time of each renovation.

Fifth, the appropriate gravity-based penalty amount is assigned to each of the 13 violations in accordance with Appendix B of the LBP Consolidated ERP and Appendix B of the Section 1018 ERP, based on the previously identified circumstance levels and extent for harm levels. According to Appendix B of the LBP Consolidated ERP, the following are the appropriate gravity-based penalty for each identified violation: (1) \$6,000; (2) \$22,500; (5) \$2,040; (6) \$2,040; (7) \$2,040; (8) \$2,040; (9) \$2,040; (10) \$2,040; (11) \$15,300; (12) \$15,300; and, (13) \$15,300. According to Appendix B of the Section 1018 ERP, the appropriate gravity-based penalty is \$3,220 for Count 3 and \$3,200 for Count 4.

Inflation is then accounted for as to each of the 13 gravity-based penalties using the 2020 inflation memo because each of the 13 violations were committed after November 2, 2015, and the penalty was assessed on or after January 13, 2020. According to the 2020 Inflation Memo and 2020 Inflation Memo footnote #30, the appropriate inflation multiplier is implemented to each violation by their nature and is as follows: (Counts 1, 2, and 5 to 14): 1.08203; and (Counts 3 and 4): 1.64990. The inflation accounted for each violation’s gravity-based penalty with their respective implemented inflation multiplier is as follows: (Count 1) \$6,492; (Count 2) \$24,346; (Count 3) \$5,313; (Count 4) \$5,313; (Count 5) \$2,207; (Count 6) \$2,207; (Count 7) \$2,207; (Count 8) \$2,207; (Count 9) \$2,207; (Count 10) \$2,207; (Count 11) \$16,555; (Count 12) \$16,555; and, (Count 13) \$16,555. The total gravity-based penalty, with inflation accounted for, is calculated by the summation of the inflation-adjusted gravity-based penalties for each of the 13 violations, and is \$104,372.

Sixth, the total gravity-based penalty with inflation accounted for is adjusted upward or downward based on Respondent’s ability to pay, history of prior violations, degree of culpability, and other matters as justice may require. Ms. Saldivar determined that no upward or downward adjustments should be made to the total gravity-based penalty with inflation accounted for:

1. According to EPA’s financial expert, Ms. Smirnova at Industrial Economics, Inc., and based on Respondent’s federal income tax returns and other financial information, Respondent has the ability to pay the total gravity-based penalty, with inflation accounted for, of \$104,372.
2. According to information available to EPA, Respondent did not have any prior history of violations.
3. Based on information available to EPA at the time the Complaint was filed, Ms. Saldivar did not include a downward or upward adjustment of the gravity-based penalty, with inflation accounted for, based on the degree of culpability.

4. Respondent does not qualify for reductions under any other factors considered, as justice may require.
 - a. Respondent did not voluntarily disclose violations to EPA before EPA received any information about the violations or before EPA initiated an inspection, and thus does not qualify to participate in EPA's *Audit Policy*, *Small Business Policy*, or *Voluntary Disclosure Policy*.
 - b. Respondent did not settle the case matter prior to filing of the pre-hearing exchange documents, and thus does not qualify for the Attitude factor reductions.
 - c. Respondent did not provide information that it was under any special circumstances or that it qualifies for extraordinary adjustments.

Complainant believes that the \$104,372 is a fair and appropriate penalty to assess against Respondent based on the 13 violations of TSCA and the RRP Rule. Ms. Saldivar has taken into consideration the following throughout the case matter: all the relevant facts and circumstances surrounding this case matter; each of the 13 violations' nature, circumstances, extent of harm, and gravity; Respondent's ability to pay and to continue business based on available financial information, including Respondent's federal income tax returns and other financial information provided by Respondent, history of prior violations, degree of culpability, and other matters as justice may require.

IX. RESERVATION OF RIGHTS

Complainant respectfully reserves the right to call all witnesses called by Respondent; to recall any of its witnesses in rebuttal; and to seek permission to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to Respondent and this Tribunal, or by order of this Tribunal.

Complainant's Initial Prehearing Exchange In the Matter of TWDS, Inc., d/b/a Windows Direct USA of Cincinnati, is hereby respectfully submitted.

Respectfully submitted,

MARY
MCAULIFFE

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MARY MCAULIFFE
Date: 2021.12.17
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Mary T. McAuliffe
Counsel for Complainant
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, Illinois 60604
Phone: 312-886-6237
mcauliffe.mary@epa.gov

Sophie C. Grueterich
Counsel for Complainant
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, Illinois 60604
Phone: 312-353-6481
grueterich.sophie@epa.gov