



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

September 30, 2014

Waterway Realty, LLC  
Brian W. Colsia, Owner/Manager  
8030 S. Willow Street  
Building 3, Unit 5  
Manchester, NH 03103

Dear Mr. Colsia:

Enclosed please find an Administrative Complaint and Compliance Order ("Complaint"), issued to you by the United States Environmental Protection Agency, Region 1 ("EPA"). The Complaint alleges that you have violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act"), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled "Renovation, Repair and Painting Rule" as set forth at 40 C.F.R. Part 745, Subparts E and L (the "RRP Rule").

Pursuant to the authority of TSCA Section 16, 15 U.S.C. § 2615, as well as the Debt Collection Improvement Act of 1996, EPA is proposing a civil penalty of \$49,654 for the violations alleged in the Complaint.

The Complaint is based on violations EPA observed during an October 12, 2014, inspection conducted at property located at 6 Mitchell Street in Nashua, New Hampshire ("Property") and on information submitted by you as owner/manager of Waterway Realty, LLC. As a result of the inspection, EPA has determined that you failed to comply with the RRP Rule during your renovation activities at the Property, prior to EPA's inspection. The attached Complaint discusses: (1) the statutory authorities for EPA's enforcement action; (2) the nature of the alleged violations; (3) the number of violations; and (4) a brief explanation of the severity of each violation.

Please be advised that you as Respondent have the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed penalties. Further, whether or not you choose to request a hearing, you may request informal discussions with EPA representatives regarding this matter. If you wish to request a hearing, you must submit, within thirty days of receiving this letter, a written request to the EPA Regional Hearing Clerk at the address set forth in the enclosed Complaint. The written request, which must be submitted with an Answer to the Complaint, must follow the requirements of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, set forth at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. If you do not submit an Answer within the thirty day period, you may be found in default. Once in default, you will have waived your right to a hearing and each allegation of

of violation will be deemed to be admitted. As a result, the full amount of the proposed penalty may be assessed against you.

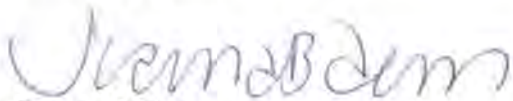
The proposed civil penalties have been determined in accordance with TSCA Section 16, 15 U.S.C. § 2615, which requires the Complainant to consider, amongst other factors, ability to pay. If you have an inability to pay the proposed penalty you may submit financial information to support your claim.

Please note that many Respondents perform Supplemental Environmental Projects ("SEPs") as part of their settlements with EPA. SEPs are environmentally beneficial projects that a Respondent agrees to undertake in settlement of an environmental enforcement action and that the Respondent is not otherwise legally required to perform. In return, EPA considers some percentage of the cost of the SEP as a factor in establishing the final penalty that the Respondent will pay. EPA has issued a SEP Policy to help Respondents and EPA staff determine: (a) whether a proposed SEP is acceptable; and (b) how much of the penalty should be mitigated if the Respondent performs the proposed SEP. A copy of that policy is enclosed. Also enclosed is EPA's Information Sheet for Small Business Resources, which may be applicable to Respondents.

In addition, please note that it is this office's policy to issue a press release upon filing or resolving an administrative enforcement action.

To avoid protracted and potentially expensive litigation, EPA is willing to engage in settlement negotiations. If you wish to explore the possibility of settlement or if you have any questions, please contact Peter DeCambre, Senior Enforcement Counsel, of my staff at (617) 918-1890.

Sincerely yours,



Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency - Region 1

Enclosures:

1. Administrative Complaint
2. Penalty Summary – Attachment 1
3. Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP) (August 2010)
4. Consolidated Rules of Practice (40 C.F.R. Part 22)
5. EPA's Information Sheet for Small Business Resources
6. Copy of letter to Hearing Clerk
7. EPA SEP Policy
8. Copy of Certificate of Service

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
Waterway Realty, LLC	)	<b>Docket No.</b>
8030 South Willow Street	)	
Building 3, Unit 5	)	<b>TSCA-01-2014-0066</b>
Manchester, New Hampshire	)	
	)	<b>COMPLAINT AND</b>
Respondent.	)	<b>NOTICE OF</b>
	)	<b>OPPORTUNITY FOR</b>
Proceeding under Section 16(a) of the	)	<b>HEARING</b>
Toxic Substances Control Act,	)	
42 U.S.C. § 2615(a)	)	

**COMPLAINT**

**I. STATUTORY AND REGULATORY BACKGROUND**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent, Waterway Realty, LLC (“Waterway” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E. Complainant seeks

civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. §2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the “Renovation, Repair and Painting Rule” or the “RRP Rule”).

4. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all renovations performed for compensation in “target housing” and “child-occupied facilities.” “Target housing” is defined as any housing constructed prior

to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

5. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing and the establishment and maintenance of records.

6. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

7. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

8. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occurred on or after January 13, 2009 and before September 7, 2013, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

## **II. GENERAL ALLEGATIONS**

9. Respondent is a limited liability company registered in New Hampshire with its principal place of business located at 8030 South Willow Street, Building 3, Unit 5, Manchester, New Hampshire. Respondent buys, sells, leases and renovates properties in New Hampshire.

10. On May 25, 2012, Waterway purchased a single family residential home (the "Property") located at 6 Mitchell St, Nashua, New Hampshire. On information and belief, Waterway purchased the Property with the intention to renovate it for an eventual sale or lease.

11. The Property was constructed in 1900, and is "Target Housing" as defined in TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

12. Brian Colsia is the owner and manager of Waterway. Mr. Colsia and Waterway functioned as the general contractor for the renovation activities at the Property. The renovation activities undertaken by Waterway at the Property included: complete power washing of the exterior, repainting the exterior, replacing window casements, replacing drywall throughout the Property, remodeling the first and second story bathrooms and kitchen, installing new flooring throughout, and miscellaneous plumbing and electrical work throughout the Property.

13. At all times relevant to this Complaint, the renovation activities at the Property constituted a "renovation," as defined in 40 C.F.R. § 745.83.

14. At all times relevant to this Complaint, the renovation activities at the Property constituted a "renovation for compensation" subject to the RRP Rule. See 40

C.F.R. § 745.82. Furthermore, the renovation activities at the Property did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

15. At all times relevant to this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

16. At all times relevant to this Complaint, Respondent was a “renovator”, as defined in 40 C.F.R. § 745.83.

17. On October 3, 2012, an inspector from EPA, Region 1, conducted an inspection at the Property to evaluate Respondent’s compliance with the RRP Rule. During the inspection, the EPA inspector interviewed Brian Colsia, the owner and manager of Waterway. Mr. Colsia stated that the Property was purchased to sell after the renovations were complete. Mr. Colsia stated that he was not aware of the RRP Rule and did not follow any of the RRP Rule requirements during the renovation.

18. At all times relevant to this Complaint, Mr. Colsia and employees of Respondent had not successfully completed an accredited course regarding the RRP Rule. Neither Mr. Colsia nor employees of Respondent were certified renovators pursuant to 40 C.F.R. § 745.90, at the time of the renovation activities nor was Respondent a certified firm pursuant to 40 C.F.R. Part 745.89.

19. As a result of the inspection, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

### **III. VIOLATIONS**

#### **Count 1 - Failure to Obtain Firm Certification**

20. Complainant incorporates by reference paragraphs 1 through 19.

21. Pursuant to 40 C.F.R. § 745.89(a), firms performing renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed “Application for Firms,” signed by an authorized agent of the firm, and pay at least the correct amount of fees.

22. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (b).

23. At all times relevant to this Complaint, Respondent had not obtained firm certification prior to beginning renovation activities at the Property. Furthermore, Respondent did not satisfy the requirements for an exemption to the certification provisions of TSCA or the RRP Rule.

24. Respondent’s failure to obtain firm certification prior to beginning renovation activities constitutes a violation of 40 C.F.R §§ 745.89(a) and 745.81(a)(2)(ii), and Section 409 of TSCA.

**Count 2 - Failure to Cover Floor with Plastic Sheeting**

25. Complainant incorporates by reference paragraphs 1 through 24.

26. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), for interior renovations, firms must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable



material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

27. While performing renovation activities at the Property, Respondent did not cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area undergoing renovation or a sufficient distance to contain the dust. When questioned by the inspector during the EPA inspection, Mr. Colsia stated that the interior floor surfaces had not been covered with plastic sheeting or other impermeable material during the renovation activities.

28. Respondent's failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, for the renovation activities at the Property constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(i)(D) and Section 409 of TSCA.

**Count 3 - Failure to Cover Ground with Plastic Sheeting**

29. Complainant incorporates by reference paragraphs 1 through 28.

30. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

31. While performing exterior renovations including power washing of the exterior, repainting the exterior, and replacing window casements at the Property, Respondent did not cover the ground with plastic sheeting or other impermeable material in the work area of the renovation activities to collect falling paint debris. When questioned by the inspector during the EPA inspection, Mr. Colsia stated that the ground was not covered with plastic sheeting or other disposable impermeable material.

32. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, for the renovation activities at the Property constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and Section 409 of TSCA.

**Count 4 – Failure to Contain Waste from Renovation Activities**

33. Complainant incorporates by reference paragraphs 1 through 32.

34. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

35. During the EPA inspection, the inspector observed that Respondent had not contained the waste from its renovation activities. The inspector observed paint chips, dust, and debris from Respondent's renovation activities around the perimeter of the exterior of the Property. The inspector observed dust and debris from Respondent's renovation activities on horizontal surfaces on the interior of the Property.

36. Respondent's failure to contain the waste from the renovation activities at the Property to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(4)(i) and Section 409 of TSCA.

**Count 5 – Failure to Ensure Workers are Certified or Trained by a Certified Renovator**

37. Complainant incorporates by reference paragraphs 1 through 36.

38. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R § 745.90

39. At all times relevant to this Complaint, the workers employed by the Respondent to perform renovation activities at the Property were neither certified renovators nor trained by a certified renovator in accordance with 40 C.F.R § 745.90.

40. When questioned by the inspector during the EPA inspection, Mr. Colsia stated that the workers employed by Respondent to perform renovation activities at the Property were neither certified renovators nor trained by a certified renovator.

41. Respondent's failure to ensure that all individuals performing renovation activities at the Property on behalf of the firm are either certified renovators or have been trained by a certified renovator constitutes a violation of 40 C.F.R § 745.89(d)(1) and Section 409 of TSCA.

**Count 6 – Failure to Assign a Certified Renovator**

42. Complainant incorporates by reference paragraphs 1 through 41.

43. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

44. At all times relevant to this Complaint, Respondent did not assign a certified renovator to the renovation activities at the Property.

45. When questioned by the inspector during the EPA inspection, Mr. Colsia stated that no certified renovator was assigned to the renovation activities at the Property.

46. Respondent's failure to assign a certified renovator to the renovation activities at the Property constitutes a violation of 40 C.F.R § 745.89(d)(2) and Section 409 of TSCA.

#### **Count 7 – Failure to Post Signs**

47. Complainant incorporates by reference paragraphs 1 through 46.

48. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants and/or these signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

49. Respondent did not post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the

work area during the renovation activities at the Property. During the EPA inspection, the inspector did not observe posted signs at the Property.

50. When questioned by the inspector during the EPA inspection, Mr. Colsia stated that no signs were posted during the renovation activities at the Property.

51. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area during the renovation activities at the Property constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1) and Section 409 of TSCA.

#### **IV. PROPOSED PENALTY**

52. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

53. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 Interim Final Policy entitled, "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint as Attachment 2. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant proposes that Respondent be assessed a civil

penalty in the amount of forty nine thousand six hundred fifty four dollars (\$49,654) for the TSCA violations alleged in this Complaint. (See Attachment 1 to this Complaint explaining the reasoning for this penalty.) The provisions violated and the corresponding penalties are as follows:

Count	Regulation Violated	Description	Penalty
1	40 C.F.R. § 745.81(a)(2)(ii)	Failure to Obtain Firm Certification	\$15,300
2	40 C.F.R. § 745.85(a)(2)(i)(D)	Failure to Cover Floor with Plastic Sheeting	\$6,000
3	40 C.F.R. § 745.85(a)(2)(ii)(C)	Failure to Cover Ground with Plastic Sheeting	\$6,000
4	40 C.F.R. § 745.85(a)(4)(i)	Failure to Contain Waste from Renovation Activities	\$6,000
5	40 C.F.R. § 745.89(d)(1)	Failure to Ensure Workers are Certified or Trained by a Certified Renovator	\$4,500
6	40 C.F.R. § 745.89(d)(2)	Failure to Assign Certified Renovators	\$4,500
7	40 C.F.R. § 745.85(a)(1)	Failure to Post Signs	\$2,840
	Adjustment Factors	10% Degree of Culpability	\$4,514
	Total		\$49,654

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

54. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

55. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

56. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109-3912

57. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Peter DeCambre, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Peter DeCambre  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: OES04-2  
Boston, Massachusetts 02109-3912

58. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

#### **VI. SETTLEMENT CONFERENCE**

59. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact Peter DeCambre, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1890. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.

60. The following documents are attachments to this Complaint:

1. Consolidated Enforcement Response and Penalty Polity for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule
2. Proposed Penalty Summary



3. Consolidated Rules of Practice



Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

9/30/14  
Date

## ATTACHMENT 1 TO COMPLAINT

**In the Matter of Waterway Realty, LLC  
Docket No.: TSCA-01-2014-0066**

### PROPOSED PENALTY SUMMARY

Pursuant to EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("LBP Consolidated ERPP"), EPA proposes a civil penalty in the amount of \$49,654 to be assessed against Waterway Realty, LLC, as follows<sup>1</sup>:

#### **COUNT 1 - Failure to Obtain Initial Firm Certification from EPA**

**Provision Violated:** 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) requires that a firm performing, offering, or claiming to perform renovations or dust sampling for compensation must obtain initial certification from EPA unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (b).

**Circumstance Level:** The failure to obtain firm certification prior to performing renovations or dust sampling results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) is a *Level 3a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential impact of noncompliance with the certification requirements is greater for larger firms as detailed in footnote 49 on page A-3 of the LBP Consolidated ERPP. Respondent employed at least four individuals at the time of the renovation cited in the complaint which warrants a *significant* extent factor.

Respondent failed to obtain certification from EPA before beginning the renovation cited in the Complaint.

#### **COUNT 2 - Failure to Adequately Cover Floor with Plastic Sheeting**

**Provisions Violated:** 40 C.F.R. § 745.89(d)(3) requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), for interior renovations, firms must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

<sup>1</sup> Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

**Circumstance Level:** The failure to cover the floor surface properly results in a high probability that lead dust and debris will contaminate the floor surface, including installed carpet. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.85(a)(2)(i)(D), is a *Level 2a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to adequately cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, for the renovation project.

### **COUNT 3 - Failure to Adequately Cover Ground with Plastic Sheeting**

**Provisions Violated:** 40 C.F.R. § 745.89(d)(3), requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

**Circumstance Level:** The failure to apply proper ground cover results in a high probability that lead dust and debris will contaminate surrounding soils. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) is a *Level 2a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to adequately cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, for the renovation project.

### **COUNT 4. Failure to Contain Waste from Renovation Activities**

**Provision Violated:** 40 C.F.R. § 745.89(d)(3), requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice

standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

**Circumstance Level:** The failure to contain waste from a renovation project results in a high probability of the release of lead dust and debris to the air and surrounding soils. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.85(a)(4)(i), is a *Level 2a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to contain waste from renovation activities to prevent release of dust and debris.

#### **Count 5 – Failure to Ensure Workers are Certified or Trained by a Certified Renovator**

**Provision Violated:** 40 C.F.R. § 745.89(d)(1) requires that firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90

**Circumstance Level:** The failure to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.89(d)(1) is a *Level 3a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator.

#### **Count 6 – Failure to Assign a Certified Renovator**

**Provision Violated:** 40 C.F.R. § 745.89(d) requires that all firms performing renovations must ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90,

and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

**Circumstance Level:** The failure to ensure that a certified renovator is assigned to the renovation results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(2) is a *Level 3a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to assign a certified renovator to the renovation project.

### **Count 7 – Failure to Post Signs**

**Circumstance Level:** 40 C.F.R. § 745.89(d)(3), requires that firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants and/or these signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

**Circumstance Level:** The failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1), is a *Level 1b* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children, if any, living in the target housing and/or the presence of pregnant women living in the target housing. The absence of children or pregnant women in this matter warrants a *minor* extent factor.

Respondent failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

### **Gravity Component Adjustments**

The total penalty was increased by 10% for culpability because Respondent claimed to be unaware of the Rule and claimed that he had not received any outreach materials prior to the inspection. Respondent should have been aware of the Rule because Respondent is in the

business of real estate management, manages multiple properties and employs more than four employees to perform renovation activities. Additionally, the Rule has been in effect since 2010 and EPA has done significant outreach promoting awareness of the Rule.

In Re: Waterway Realty, LLC  
Docket No.: TSCA-01-2014-0066

CERTIFICATE OF SERVICE

I hereby certify that the Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Wanda Rivera  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, Massachusetts 02109 - 3912

One copy by Certified Mail:

Waterway Realty, LLC  
Brian W. Colsia, Owner/Manager  
8030 S. Willow Street  
Building 3, Unit 5  
Manchester, NH 03103

Dated: \_\_\_\_\_

9/30/2014



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Peter DeCambre  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency,  
Region 1  
5 Post Office Square, Suite 100 (OES 4-1)  
Boston, Massachusetts 02109 - 3912  
Tel (617) 918-1890  
Electronic Fax (617) 918-0890