

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
Stephen Pearson d/b/a)	
Pearson Custom Homes)	Docket No.
30 Wayside Avenue)	TSCA-01-2018-0015
Byfield, MA 01922)	
)	COMPLAINT AND
Respondent.)	NOTICE OF
)	OPPORTUNITY FOR
Proceeding under Section 16(a) of the)	HEARING
Toxic Substances Control Act,)	
15 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” or “Complainant”), Region 1. Respondent, Stephen Pearson doing business as Pearson Custom Homes (“Pearson Custom Homes” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has 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 “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” and the “Lead-Based Paint Activities Rule,” respectively).

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.” As

provided in 40 C.F.R. § 745.83, “renovation” means the “modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement.” “Renovation” includes the removal of building components (e.g. walls, ceilings, plumbing, windows), and includes the renovation of a building for the purpose of converting a building or portion of a building into target housing. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). See 40 C.F.R. § 745.103.

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 child-occupied facilities, 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.

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

8. Section 16(a) of TSCA, 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Under the Debt Collection Improvement Act of 1996, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and EPA's Civil Monetary Penalty Inflation Adjustment Rule which is codified at 40 C.F.R. Part 19, for violations occurring after November 2, 2015, the statutory maximum penalty for violations for which a penalty is assessed after January 15, 2018 is \$38,892.

II. GENERAL ALLEGATIONS

9. Respondent is a sole proprietorship in Massachusetts with its business address located at 30 Wayside Avenue, Byfield, Massachusetts, 01922, which is also the address of its principal owner and operator, Stephen Pearson.

10. In 2016, Respondent was hired to renovate the residential building at 217 Bartlett Street in Portsmouth, New Hampshire ("217 Bartlett St.") which was constructed in 1900, to convert the building into condominiums.

11. At all times relevant to this Complaint, the building located at 217 Bartlett St. was "target housing," as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the building does not satisfy the requirements for an exemption to the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

12. The work done by Respondent at 217 Bartlett St. came to the attention of EPA via a referral from the New Hampshire Department of Health and Human Services ("NHDHHS"). NHDHHS learned of Respondent's work through a complaint by a

neighbor of the building whose property was being affected by dust from Respondent's demolition activities.

13. On December 9, 2016, EPA representatives conducted an inspection at the 217 Bartlett St. building while Respondent was performing work at the property. The inspectors found that the interior of the vacant building had been stripped down to the studs with all walls and painted surfaces heavily disturbed by demolition work.

14. During the EPA Inspection, Mr. Stephen Pearson admitted to the EPA representatives that Respondent was not a certified firm as required by the RRP Rule.

15. On March 16, 2018, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a "Notice of Investigation Results – Federal Lead-based Paint Requirements" and an "Expedited Settlement Agreement," ("Notice and ESA Package") that addressed a single RRP Rule violation, consistent with the EPA Office of Enforcement and Compliance Assurance's August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. According to a signed receipt, Respondent received the Notice and ESA Package on April 2, 2018. Despite additional attempts by EPA by telephone and email to request a response from Respondent, EPA received no response to its offer of expedited settlement.

16. On September 21, 2018, EPA received a copy of a report written by American Environmental Testing Services of New England regarding lead testing on dust and soil samples taken from the interior and exterior of 217 Bartlett St. on December 6, 2016. The report indicates the presence of lead in the dust and soil samples.

17. At all times relevant to the allegations set forth in this Complaint, Respondent's demolition activities at 217 Bartlett St. constituted a "renovation," as defined in 40 C.F.R. § 745.83.

18. At all times relevant to the allegations set forth in this Complaint, Respondent's demolition activities at 217 Bartlett St. constituted a "renovation for compensation" subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the renovation at 217 Bartlett St. did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

19. At all times relevant to the allegations set forth in this Complaint, Respondent was a "renovator" as defined in 40 C.F.R. § 745.83.

20. At all times relevant to the allegations set forth in this Complaint, Respondent was a "firm," as defined in 40 C.F.R. § 745.83.

21. Based on the above-described inspection, Complainant has identified the following violation 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. VIOLATION

Count 1 – Failure to Obtain Firm Certification under RRP Rule

22. Complainant incorporates by reference paragraphs 1 through 21.

23. Firms that perform renovations for compensation in target housing must apply to EPA for certification to perform renovations or dust sampling under 40 C.F.R. § 745.89(a), pursuant to 40 C.F.R. § 745.81(a)(2)(ii), which provides that no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under § 745.89.

24. The building at 217 Bartlett St. is target housing because it is housing built in 1900.

25. At the time of the EPA Inspection, Pearson Custom Homes had not applied for or received RRP firm certification from the EPA.

26. Respondent's failure to obtain RRP firm certification prior to performing renovation work at 217 Bartlett St. constitutes a violation of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii).

27. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. PROPOSED PENALTY

28. 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.

29. To assess a penalty for the alleged violation in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to account 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. 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 **four thousand six hundred and sixty-seven dollars (\$4,667)** for the TSCA violation alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty.)

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

30. 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.

31. 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.

32. 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: ORC04-6
Boston, Massachusetts 02109-3912

33. 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 John Hultgren, 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:

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

34. 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.

35. The filing of service of documents other than the complaint, rulings,

orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

VI. SETTLEMENT CONFERENCE

36. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violation 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 John Hultgren, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1761. 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.



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

September 28, 2018
Date

Attachment I

In the Matter of Stephen Pearson d/b/a Pearson Custom Homes

Docket Number TSCA-01-2018-0015

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Stephen Pearson d/b/a Pearson Custom Homes, which seeks to assess a civil penalty in the amount of **\$4,667** for alleged violations of the Renovation, Repair and Painting ("RRP") Rule. The penalty was calculated according 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* (the "LBP Consolidated ERPP"). A breakdown of the penalty is set forth below.

COUNT I - Failure of a Firm to Obtain Initial Certification

Provision Violated: Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c). Under 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

Circumstance Level: The failure to obtain certification from EPA prior to performing renovations results in a medium probability of impacting human health and the environment because a firm that is not certified by EPA is less likely 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) 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 living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a major extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a significant extent factor. The documented absence of children or pregnant women warrants a minor extent factor.

Respondent failed to obtain firm certification before conducting a renovation at the 217 Bartlett Street, Portsmouth, New Hampshire housing unit:

Respondent	Address	Date of Renovation	Children	Extent of Harm	Gravity-based Penalty
Pearson Custom Homes	217 Bartlett Street	12/9/16	None	Minor	\$4,667*

*The \$4,500 figure derived from the LBP Consolidated ERPP is adjusted to \$4,667 to account for inflation in accordance with EPA's 2018 Civil Monetary Penalty Inflation Adjustment Rule. See page 13 of *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*, available at <https://www.epa.gov/enforcement/amendments-epas-civil-penalty-policies-account-inflation-effective-january-15-2018-and>