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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------------------|---|------------------------------|
| In the Matter of: |) | |
| |) | DOCKET NO. TSCA-10-2013-0124 |
| Alaska Commercial Contractors, Inc. |) | |
| Juneau, Alaska |) | CONSENT AGREEMENT AND |
| |) | FINAL ORDER |
| |) | |
| Respondent. |) | |

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to TSCA Section 16(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Alaska Commercial Contractors, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Air, Waste and Toxics, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 409 of TSCA is proposed to be assessed.

2.3. Respondent is a corporation formed in the State of Alaska

2.4. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with, among other things, any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities including certification of individuals and firms for renovations, and work practice standards for renovation. These rules are codified at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation.

3.2. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation applies to all renovations performed for compensation in target housing and child-occupied facilities.

3.3. “Target housing” is defined at 40 C.F.R. § 745.103 to mean “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities... .”

3.4. “Person” is defined at 40 C.F.R. § 745.83 to mean “any natural or judicial person including any individual, corporation, partnership, or association... .”

3.5. “Firm” is defined at 40 C.F.R. § 745.83 to mean “a company, partnership, corporation, sole proprietorship or individual doing business association, or other business entity... .”

3.6. “Renovation” is defined at 40 C.F.R. § 745.83 to mean “the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces... .”

3.7. “Renovator” is defined at 40 C.F.R. § 745.83 as “an individual who either performs or directs workers who perform renovations a certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State of Tribal program.”

3.8. 40 C.F.R. § 745.81(a)(2)(ii) requires that “a firm that performs, offers, or claims to perform renovations in target housing or child-occupied facilities for compensation must first obtain initial certification from the EPA.”

3.9. 40 C.F.R. § 745.89(d)(1) requires that firms 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 § 745.90.”

3.10. 40 C.F.R. § 745.89(d)(2) requires that firms must ensure that a certified renovator is assigned to each renovation performed by a firm which in turn must discharge all of the certified renovator responsibilities identified in § 745.90.

3.11. Respondent is a general contractor which entered into a contract in February 2011 with the State of Alaska, Department of Administration to complete work for compensation on

the a structure known as the Governor's House, located at 716 Calhoun Avenue, Juneau, Alaska. The scope of work described in the contract constitutes a "renovation" as defined at 40 C.F.R. § 745.83. The Governor's House was built in approximately 1912 and is "target housing" as defined at 40 C.F.R. § 745.103.

3.12. Respondent did not receive firm certification for renovation work from EPA until May 18, 2011. Respondent's failure to first obtain certification from EPA prior to offering to perform a renovation at the Governor's House is a violation of 40 C.F.R. § 745.81(a)(2)(ii).

3.13. After contracting for work at the Governor's House in 2011, Respondent awarded a contract to perform certain paint removal and repainting activities to a subcontractor ("Subcontractor"). Subcontractor performed work under its subcontract, commencing April 8, 2011. Subcontractor's activities constituted a renovation as defined in 40 C.F.R. § 745.83. Subcontractor's employees conducting the renovation activities did not receive training and certification as renovators until May 9, 2011. Respondent's failure to ensure all individuals performing renovation activities on behalf of Respondent are either certified renovators or have been trained by a certified renovator in accordance with § 745.90, is a violation of 40 C.F.R. § 745.89(d)(1).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Based on Respondent's willingness to settle this matter without litigation; the nature, circumstances, extent, and gravity of the violations; Respondent's ability to pay, prior history of violations, degree of culpability, economic benefit or savings (if any) resulting from the violations; and such other matters as justice may require, and in accordance with the

“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 2010, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$32,130.00.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Section V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Kim Farnham, TSCA Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop AWT-128
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. Each party shall bear its own costs in bringing or defending this action.

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.9. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), if Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

4.10. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Section III and is currently in compliance with all applicable TSCA requirements at each of the facilities under its control.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

ALASKA COMMERCIAL CONTRACTORS, INC.

Doug Courtney
Signature
Print Name: Doug Courtney
Title: PRESIDENT

Dated: 9-23-13

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Christina Colt
for Kate Kelly, Director
Office of Air, Waste and Toxics

Dated: 24 Sept. 2013

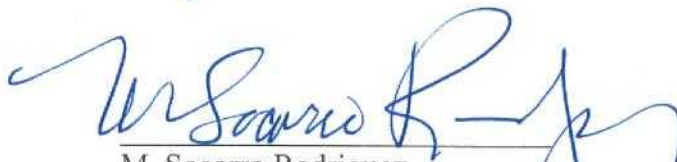
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 25th day of September, 2013.


M. Socorro Rodriguez
Regional Judicial officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Alaska Commercial Contractors, Inc., Docket No.: TSCA-10-2013-0124**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Doug Courtney, President
Alaska Commercial Contractors, Inc.
10006 Crazy Horse Drive
Juneau, AK 99801

DATED this 26th day of Sept., 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10