



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
April 30, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7641 4487

Mr. Samuel M. Lewis
c/o. J. Steven Justice
Dungan & LeFevre Co. LPA
210 West Main St.
Troy, Ohio 45373

Consent Agreement and Final Order in the Matter of
Samuel M. Lewis, Docket No. TSCA-05-2013-0009

Dear Mr. Lewis:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on April 30, 2013, with the Regional Hearing Clerk.

Complainant has determined, based on certain financial documentation that Respondent has the ability to pay \$0 as a civil penalty for the violations alleged in this CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Fericelli", with a long horizontal line extending to the right.

for Paul Fericelli
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:



Docket No. TSCA-05-2013-0009

Samuel M. Lewis
Columbus, Ohio

Respondent.

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

) Proceeding to Assess a Civil Penalty
) Under Section 16(a) of the Toxic Substances
) Control Act, 15 U.S.C. § 2615(a)
)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Samuel M. Lewis (Respondent), an individual with a place of residence at 488 Oakland Avenue, Columbus, Ohio 43202.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No.102-550, Oct. 28 1998 (Title X), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of six; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. See 42 U.S.C. § 4851.

10. Section 1021 of Title X amended TSCA by adding Sections 401-412, entitled Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, and

that the training programs are accredited and contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair and Painting Program Rule (RRP Rule).

12. 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal or local government agency; or a nonprofit organization.

13. 40 C.F.R. § 745.83 defines “renovation” as 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 as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

14. 40 C.F.R. § 745.83 defines “renovator” 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 or tribal program.

15. 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 six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

16. Under 40 C.F.R. § 745.81(a)(4)(ii), on or after July 6, 2010, all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85 and the associated recordkeeping requirements in 40 C.F.R. § 745.86(b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in 40 C.F.R. § 745.82(a).

17. Under 40 C.F.R. § 745.82(a), the requirements of 40 C.F.R. Part 745, Subpart E, do not apply to renovations performed for compensation in target housing if an inspector, risk assessor or certified renovator has determined in writing that the components affected by the renovation are free of lead-based paint, as set forth in 40 C.F.R. § 745.82(a).

18. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. The Administrator of EPA may assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA that occurred after January 12, 2009, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615, 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

General Allegations

20. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

21. Respondent is a “firm,” as defined at 40 C.F.R. § 745.83.

22. Respondent is a “renovator” as defined at 40 C.F.R. § 745.83.

23. Every employee of Respondent who performs or direct workers to perform renovations is a “renovator,” as defined at 40 C.F.R. § 745.83.

The 108 East Kelso Property

24. On August 16, 2011, Respondent entered into a contract to conduct work on a single-family dwelling located at 108 East Kelso Road, Columbus, Ohio (the 108 East Kelso Property).

25. The 108 East Kelso Property was constructed in 1930.

26. The 108 East Kelso Property is “target housing” as defined in 40 C.F.R. § 745.103.

27. The contract referenced in paragraph 24, above, specified that Respondent would prepare, prime, and paint the soffit, fascia, aluminum siding, doors and door frames, window frames, and the porch, pillars, and ceiling. Respondent would prepare their surfaces for new paint with a full scrape to remove all loose and peeling paint.

28. The work described in paragraph 27, above, is “renovation,” as defined at 40 C.F.R. § 745.83.

29. On or about August 1, 2011, Respondent began the renovations referenced in paragraph 27, above, to the 108 East Kelso Property.

30. When Respondent offered, in the form of a contract, to perform the renovations referenced in paragraph 27, above, no written determination had been made by an inspector, risk assessor, or certified renovator that the components of the 108 East Kelso Property affected by the renovation were free of lead-based paint, as set forth in 40 C.F.R. § 745.82(a).

31. When Respondent began the renovations referenced in paragraph 27, above, no determination had been made by an inspector, risk assessor, or certified renovator that the

components of the 108 East Kelso Property affected by the renovation were free of lead-based paint, as set forth at 40 C.F.R. § 745.82(a).

32. The renovations described in paragraph 27, above, do not qualify for an exception under 40 C.F.R. § 745.82(a).

33. Respondent was required to perform the renovations referenced in paragraph 27, above, in accordance with the work practice standards in 40 C.F.R. § 745.85 and the associated recordkeeping requirements in 40 C.F.R. § 745.86(b)(6).

Count 1

34. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

35. 40 C.F.R. § 745.85(a)(5)(i)(A) requires firms to collect all paint chips and debris, and without dispersing any of it, to seal the material in a heavy-duty bag.

36. When Respondent completed the renovations referenced in paragraph 27, Respondent failed to collect all paint chips and debris, and without dispersing any of it, to seal the material in a heavy-duty bag.

37. By failing to collect all paint chips and debris, and without dispersing any of it, to seal the material in a heavy-duty bag, Respondent violates 40 C.F.R. § 745.85(a)(5)(i)(A).

Civil Penalty

38. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant has determined that Respondent has the ability to pay \$0 as a civil penalty for the violations alleged in this CAFO. In determining the penalty amount, Complainant considered 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

Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, dated August 19, 2010.

39. Respondent certifies that the financial documentation he submitted, in response to Complainant's request regarding this matter, is true and accurate.

General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

40. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, and other applicable federal, state, and local laws.

42. Respondent certifies that he is complying with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing regulations at 40 C.F.R. Part 745.

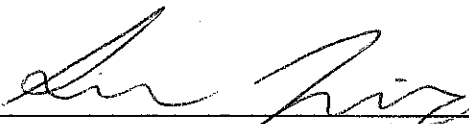
43. The terms of this CAFO bind Respondent, and its successors and assigns.

44. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and attorneys fees in this action. This CAFO constitutes the entire agreement between the parties.

Samuel M. Lewis, Respondent


03/05/2013
Date



Samuel M. Lewis
Respondent

United States Environmental Protection Agency, Complainant

4/25/2013
Date



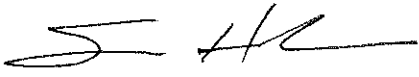
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: Samuel M. Lewis
Docket No. TSCA-05-2013-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-29-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
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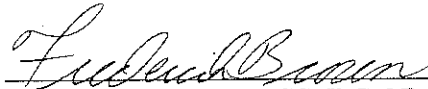
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Samuel M. Lewis, was filed on April 30, 2013, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7641 4487 to:

Mr. Samuel M. Lewis
c/o. J. Steven Justice
Dungan & LeFevre Co. LPA
210 West Main St.
Troy, Ohio 45373

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Bob Peachey, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2013-0009



APR 30 2013

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