

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 JUL 18 PM 1:30

In the Matter of

Nosal Enterprises Inc.

Respondent

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Docket No. TSCA-07-2016-0035

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Nosal Enterprises, Inc. (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Lead-Based Paint Renovation, Repair and Painting Rule*, (RRP Rule) promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Nosal Enterprises Inc., a corporation in good standing under the laws of the state of Nebraska.

Section III

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. On June 1, 1998, EPA promulgated information distribution and record keeping requirements codified at 40 C.F.R. Part 745, Subpart E, *Requirements for Hazard Education Before Renovation of Target Housing* (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. § 2686. On April 22, 2008, EPA amended and re-codified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, *Lead-Based Paint Renovation, Repair and Painting Rule* (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686 and 2687. The regulations aimed to protect the public from lead-based paint hazards associated with renovation, repair and painting activities. Under the RRP Rule each person or firm who performs for compensation a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities. Firms and individuals performing renovation, repair and painting projects for compensation that disturb lead-based paint must use

certified renovators who follow specific work practices to prevent lead contamination. Prior to the start of renovation, the firm or individual performing the renovation must provide the owners and occupants of the target housing units subject to regulated renovation, repair, and/or painting a copy of the U.S. Environmental Protection Agency-approved *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet, and maintain written acknowledgment that the pamphlet has been provided.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. EPA promulgated regulations regarding lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. Part 745, Subpart E.

9. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

10. EPA promulgated regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. These regulations are found within 40 C.F.R. Part 745, Subpart E.

11. The term *target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. 15 U.S.C. § 2681(17).

12. The term *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 as defined by this part (40 C.F.R. § 745.223). The term renovation includes but is not limited to the following: 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. 40 C.F.R. § 745.83.

13. The term *firm* means 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. 40 C.F.R. § 745.83

14. 40 C.F.R. § 745.89(a)(1) states that firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

15. 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 40 C.F.R. § 745.90.

16. 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.

17. Pursuant to 40 C.F.R. § 745.82(b) an *emergency renovation* is defined as renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

18. Pursuant to 40 C.F.R. § 745.82(b), emergency renovations are exempt from the information distribution requirements, warning sign, containment, waste handling, training and certification requirements, found at 40 C.F.R. §§ 745.84, 745.85, 745.89 and 745.90, to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of 40 C.F.R. § 745.85(a), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6) and (b)(7) [sic].

19. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain all records necessary to demonstrate compliance with this rule for a period of three (3) years following the renovation.

20. Pursuant to 40 C.F.R. § 745.86(b)(6), in an emergency renovation, the firm must document the nature of the emergency and the provisions of the rule that were not followed.

21. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to

administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

22. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

Section IV

General Factual Allegations

23. Respondent is, and at all times referred to herein was, a “firm” and a “person” within the meaning of TSCA.

24. Respondent offers fire and water damage cleanup and restoration.

25. On March 11, 2015, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the U.S. Environmental Protection Agency, Region 7 conducted an inspection of Respondent’s records of emergency renovations (hereinafter, “the inspection”) performed for compensation.

26. During the inspection, records were collected for emergency renovations performed at the following Omaha, Nebraska properties (hereinafter, “the Properties”): 1) 4402 S. 39th Street, 2) 5062 S. 38th Street, 3) 5023 California Street, 4) 3014 Belvedere Boulevard, and 5) 3320 Polk Street.

27. The Properties are all “target housing” as defined by 40 C.F.R. § 745.103.

Violations

28. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

29. The facts stated in Paragraphs 23 through 27 above are herein incorporated.

30. At the time of the inspection, documents were collected regarding an emergency renovation that occurred on or about January 19, 2013, at 4402 S. 39th Street, Omaha, Nebraska.

31. The documents revealed that Respondent failed to maintain records documenting:
a) the provisions of the RRP rule that were not followed during this emergency renovation; and
b) how it complied with the cleaning verification provisions in violation of 40 C.F.R. § 745.86(b)(6).

32. Respondent's failure to perform the acts described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

33. The facts stated in Paragraphs 23 through 27 above are herein incorporated.

34. At the time of the inspection, documentation was collected regarding an emergency renovation that occurred on or about February 27, 2015, at 5062 S. 38th Street, Omaha, Nebraska.

35. The documents revealed that Respondent failed to maintain records documenting:
a) the provisions of the RRP rule that were not followed during this emergency renovation; and
b) how it complied with the cleaning verification provisions in violation of 40 C.F.R. § 745.86(b)(6).

36. Respondent's failure to perform the acts described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

37. The facts stated in Paragraphs 23 through 27 above are herein incorporated.

38. At the time of the inspection, documentation was collected regarding an emergency renovation that occurred on or about March 4, 2015, at 5023 California Street, Omaha, Nebraska.

39. The documents revealed that Respondent failed to maintain records documenting:
a) the provisions of the RRP rule that were not followed during this emergency renovation; and
b) how it complied with the cleaning verification provisions in violation of 40 C.F.R. § 745.86(b)(6).

40. Respondent's failure to perform the acts described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

41. The facts stated in Paragraphs 23 through 27 above are herein incorporated.

42. At the time of the inspection, documentation was collected regarding an emergency renovation that occurred on or about May 31, 2013, at 3014 Belvedere Boulevard, Omaha, Nebraska.

43. The documents revealed that Respondent failed to maintain records documenting:
a) the provisions of the RRP rule that were not followed during this emergency renovation; and

b) how it complied with the cleaning verification provisions in violation of 40 C.F.R. § 745.86(b)(6).

44. Respondent's failure to perform the acts described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 5

45. The facts stated in Paragraphs 23 through 27 above are herein incorporated.

46. At the time of the inspection, documentation was collected regarding an emergency renovation that occurred on or about January 17, 2013, at 3320 Polk Street, Omaha, Nebraska.

47. The documents revealed that Respondent failed to maintain records documenting:
a) the provisions of the RRP rule that were not followed during this emergency renovation; and
b) how it complied with the cleaning verification provisions in violation of 40 C.F.R. § 745.86(b)(6).

48. Respondent's failure to perform the acts described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

49. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

50. Respondent neither admits nor denies the factual allegations set forth above.

51. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

52. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

53. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

54. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

55. The effect of settlement described in Paragraph 56 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 53 of this Consent Agreement and Final Order.

56. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Two Thousand One Hundred Dollars (\$2,100) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart E alleged in this document.

57. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as

provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Two Thousand One Hundred Dollars (\$2,100) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
Nosal Enterprises Inc.


Date: July 11, 2016

By: 

Pat Nosal
Print Name

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/14/2016



Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 7/13/16



Kelley Catlin
Office of Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective upon filing.

Date: July 18, 2016

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency

IN THE MATTER Of Nosal Enterprises, Inc., Respondent
Docket No. TSCA-07-2016-0035

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

pnosal@servprosarpycounty.com

Dated: 7/18/16


Kathy Robinson
Hearing Clerk, Region 7