

U. S. ENVIRONMENTAL PROTECTION AGENCY 2015 JUN 18 AM 10: 39  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KS 66219

**BEFORE THE ADMINISTRATOR**

In the Matter of )  
 ) Docket No. TSCA-07-2015-0007  
Matthew Young )  
8417 Woodson Place )  
Raytown, MO 64138 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**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 (CAFO) 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 lead-based paint certification, information distribution and renovation requirements of 40 C.F.R. Part 745, Subpart E (Renovation Repair and Painting Rule a/k/a

"RRP" Rule), which were authorized for promulgation by Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682, 2686 and 2687.

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

4. Respondent is an individual named Matthew Young.

#### 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. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U.S.C. § 4851a. The Act amended TSCA by adding Title IV - Lead Exposure Reduction, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. 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.

7. 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"). *See* Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (issued Mar. 31, 2008) (codified at 40

C.F.R. Part 745, Subpart E). The RRP Rule pertains to lead-based paint activities, and the regulations set forth work practice standards for the renovation of residences built prior to 1978 and require certification of individuals and firms who are involved in these activities.

8. Section 401(17) of TSCA, 15 U.S.C. § 2681(17) defines *target housing* to mean 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.

9. 40 C.F.R. § 745.83 defines *renovation* to mean 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.

10. 40 C.F.R. § 745.89(a)(1) provides that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

11. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to 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 [Renovator Certification and Dust Sampling Technician Certification].”

12. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. These work practice standards are outlined in 40 C.F.R § 745.85, and they require, in pertinent part:

(a) Occupant Protection.

(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. 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. 40 C.F.R. § 745.85(a)(1);

(2) For “Interior renovations” a firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed. 40 C.F.R. § 745.85(a)(2)(i)(A)

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material. 40 C.F.R. § 745.85(a)(2)(i)(B)

(C) 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. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls. 40 C.F.R. § 745.85(a)(2)(i)(D)

(D) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs. 40 C.F.R. § 745.85(a)(5)(ii)(B)

(3) For “Exterior renovations” a firm 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, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system. 40 C.F.R. § 745.85(a)(2)(ii)(c)

13. 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).

14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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, 15 U.S.C. § 2689. 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.

#### **General Factual Allegations**

15. Presently, and at the time of the actions described herein, Respondent is an individual providing residential renovation services, including window replacement. Therefore, at the time of the renovation described herein, Respondent was a “firm” as defined in 40 C.F.R. § 745.83.

16. On September 19, 2012, Respondent performed renovations on residential property located at 4512 E. 112<sup>th</sup> Terrace in Kansas City, Missouri (“the Property”). The renovation project involved the replacement of eight windows, which Respondent performed.

17. At all times relevant to this Complaint, the renovation project at the Property was a “renovation for compensation” subject to the RRP Rule. *See* 40 C.F.R. § 745.82.

18. The Property was constructed before 1978 and is target housing as defined by 40 C.F.R. § 745.103. One of the occupants of the Property was pregnant at the time of the renovation.

19. On September 21, 2012, an inspector from EPA Region 7 conducted a site visit of the work site at the Property to evaluate Respondent's compliance with the RRP Rule. On February 5, 2013, an inspector from EPA Region 7 conducted an inspection of Respondent's records relating to the renovation.

20. As a result of the inspections and additional information obtained by EPA, 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 in 40 C.F.R. Part 745, Subpart E.

**Alleged Violations**

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

**Count One**

21. Each and every preceding paragraph is incorporated by reference herein.

22. Pursuant to 40 C.F.R. §§ 745.89(a)(2)(ii) and 745.89(a)(1), firms performing renovations for compensation must be certified by the EPA and have obtained initial certification prior to performance of renovations.

23. At the time of the renovation of the Property, Respondent had not obtained initial certification to be a firm performing renovations for compensation.

24. Respondent's failure to ensure that it obtained initial firm certification prior to the renovation at the Property for compensation constitutes a violation of 40 C.F.R.

§§ 745.89(a)(2)(ii) and 745.89(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Two**

25. Each and every preceding paragraph is incorporated by reference herein.

26. 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. 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.”

27. At no time during the renovation of the Property did Respondent 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.

28. Respondent’s failure to post the required signage described above constitutes a violation of 40 C.F.R. § 745.85(a)(1) and, therefore, a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Three**

29. Each and every preceding paragraph is incorporated by reference herein.

30. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A), firms performing interior renovations for compensation must remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

31. Although the renovation at the Property included interior renovation for compensation, Respondent failed to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material

with all seams and edges taped or otherwise sealed, as required.

32. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(A) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Four**

33. Each and every preceding paragraph is incorporated by reference herein.

34. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(B), firms performing interior renovations for compensation must close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

35. Although the renovation at the Property included interior renovation for compensation, Respondent failed to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, as required.

36. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(B) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Five**

37. Each and every preceding paragraph is incorporated by reference herein.

38. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms performing interior renovations for compensation 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.

39. Although the renovation at the Property included interior renovation for compensation, Respondent failed 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, as



required.

40. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(D) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Six**

41. Each and every preceding paragraph is incorporated by reference herein.

42. Pursuant to 40 C.F.R. § 745.85(a)(5)(ii)(B) firms performing interior renovations for compensation must thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

43. Although the renovation at the Property included interior renovation for compensation, Respondent failed to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum.

44. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(5)(ii)(B) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Seven**

45. Each and every preceding paragraph is incorporated by reference herein.

46. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(c) firms performing exterior renovations for compensation 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, unless the property line prevents 10 feet of such ground covering.

47. Although the renovation at the Property included exterior renovation for compensation, Respondent failed 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, as required.

48. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(ii)(c) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Section VI**  
**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 herein.

51. Respondent waives the 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. Respondent agrees that the effect of this settlement is conditioned upon the accuracy of this representation of Respondent to EPA.

54. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty of Five Hundred Dollars (\$500), as specified in the Final Order.

55. Payment of the mitigated civil penalty, set forth in the Final Order, is based on an ability to pay analysis and 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. Part 745 alleged in this document.

56. Respondent understands that the 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 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 charged 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 VII**  
**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. Within ninety (90) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of Five Hundred Dollars (\$500). The payment shall be made at the address below. The 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  
PO Box 979077  
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

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

Raymond C. Bosch, 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.

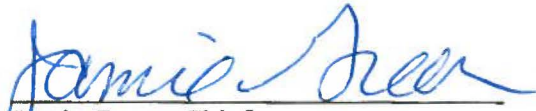
**RESPONDENT**  
**Matthew Young**

Date: 6-2-15

  
Matthew Young

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/15/2015



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

Date: June 15, 2015



Raymond C. Bosch, Attorney  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: 6-18-15

Karina Borromeo  
KARINA BORROMEO  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Matthew Young, Respondent  
Docket No. TSCA-07-2015-0007

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 by email to Attorney for Complainant:

[bosch.raymond@epa.gov](mailto:bosch.raymond@epa.gov)

Copy by First Class Mail to:

Rustin Kimmel, Esq.  
Lathrop & Gage, LLC  
2345 Grand Blvd., Suite 2200  
Kansas City, Missouri 64108-2618

Copy by Email and  
First Class Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. EPA  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dated: 6/22/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7