

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

NOV 24 PM 2:46  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
HEARING CLERK

In the Matter of )

Docket No. TSCA-07-2009-0020

COWHERD CONSTRUCTION COMPANY INC. )

Springfield, MO )

Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Cowherd Construction Company Inc. (Respondent) has 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).

**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 (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 regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to Title IV (15 U.S.C. 2681-2692) of TSCA

## 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 Cowherd Construction Company Inc., 3159 West Republic Road, Springfield, Missouri 65807.

## 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. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide

purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

#### **Section IV**

##### **General Alleged Violations**

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

7. Respondent is the “lessor,” as that term is defined by 40 C.F.R. § 745.103, of residential housing units located at 1106 W. Lynn Street and 4304 S. Farm Road 137, both in Springfield, Missouri.

8. The properties leased by Respondent were constructed before 1978; therefore, they are “target housing” as that term is defined by 40 C.F.R. § 745.103.

##### **Violations**

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

##### **Count 1**

10. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

11. Information collected during an EPA review of Respondent’s records on March 5, 2009, shows that Respondent entered into a contract to lease the property at 1106 W. Lynn Street on July 13, 2007.

12. Information collected shows that Respondent failed to provide the lessee of the property managed by Respondent with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under the contract to lease the target housing unit managed by Respondent.

13. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 209 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**

14. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

15. Information collected during an EPA review of Respondent's records on March 5, 2009, shows that Respondent entered into a contract to lease the property at 4304 S. Farm Road 137 on October 10, 2008.

16. Information collected shows that Respondent failed to provide the lessee of the property managed by Respondent with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under the contract to lease the target housing unit managed by Respondent.

17. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 209 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 III

#### Consent Agreement

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

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. In response to the violations of TSCA in this Consent Agreement and Final Order and in settlement of this matter, although not required by TSCA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below, which the parties agree is intended to secure significant environmental or public health protection and improvement.

26. Within ninety (90) calendar days of the effective date of this CAFO, in settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: Respondent agrees to replace building components contaminated with lead paint at the following units located in Springfield, Missouri:

a. Replacement of overhead garage doors at 2452 South Nettleton Avenue, Springfield, Missouri. Estimated cost for the project is \$2,360.

b. Replacement of ten windows at 1121 West Harrison Street, Springfield, Missouri. Estimated cost for the project is \$6,640.

c. Replacement of three windows and a back door at 2704 E. Locust, Springfield, Missouri. Estimated cost for the project is \$4,630.

27. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the notification sent to the Missouri Department of Health and Senior Services informing the state of Respondent's intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

28. Respondent agrees that the abatement work on the SEP project referenced in Paragraph 26 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 26 above receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

29. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

**I certify under penalty of law** that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

Stephven Richard  
WWPD/TOPE  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

As to the state:

Brandon Rekus  
Missouri Department of Health and Senior Services  
930 Wildwood  
Jefferson city, MO 65109

30. If the SEP referenced in Paragraph 26 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any

documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 22 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

31. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.



32. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

33. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

34. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 23 above 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 One Thousand Five Hundred and Forty Dollars (\$1,540.00) within thirty (30) days of the effective date of this Final Order. Such payment shall

IN THE MATTER OF Cowherd Construction Company Inc.  
Docket No. TSCA-07-2009-0020

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:

US 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  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kent Johnson, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

**RESPONDENT**

**COWHERD CONSTRUCTION COMPANY, INC.**

Date: 11-18-09

By:



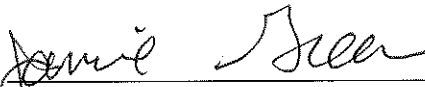
Trent Cowherd  
Print Name

Vice President  
Title

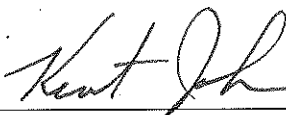
**COMPLAINANT**

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 11/24/09

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

Date: 11/24/09

By:   
Kent Johnson  
Office of Regional Counsel

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

Date: November 24, 2009 Robert L. Patrick  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Cowherd Construction Company Inc., Respondent  
Docket No. TSCA-07-2009-0020

CERTIFICATE OF SERVICE

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

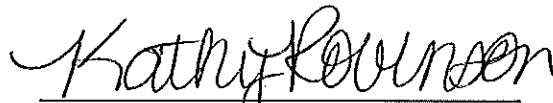
Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Trent Cowherd, Vice President  
Cowherd Construction Company Inc.  
3159 West Republic Road  
Springfield, Missouri 65807

Dated: 11/24/09

  
Kathy Robinson  
Hearing Clerk, Region 7