

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2015 JAN 21 AM 10:37**

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of:</b>	)	
	)	<b>Docket No. TSCA-07-2015-0003</b>
	)	
<b>Custom Builders Russellville, Inc.</b>	)	
<b>11707 Old Route C</b>	)	
<b>Russellville, Missouri 65074</b>	)	
	)	
	)	
<b>Respondent</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and CUSTOM BUILDERS RUSSELLVILLE, INC. (hereinafter 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).

**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 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 and 2686.

## **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 Custom Builders Russellville, Inc., is a renovator offering work in Missouri. The Respondent meet the definition of a “Firm” and of a “Person”, as those terms are set forth in 40 C.F.R. § 745.83.

## **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 *Title IV - Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. 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.

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 has 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 (RRP Rule), and were promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682.

9. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the Administrator of EPA promulgate regulations with recordkeeping and reporting requirements necessary to insure the effective implementation of TSCA Title IV, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

10. 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 this part (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.

11. 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).

12. 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**

13. The Respondent is and at all times referred to herein was a “person” and a “firm” within the meaning of 40 C.F.R. § 745.83.

14. On January 15, 2014, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the United States Environmental Protection Agency, Region 7 conducted an inspection of a residence located at 1920 W. Main, Jefferson City, Missouri (hereinafter Residence), where Respondent was in the process of conducting “renovations”, as defined by 40 C.F.R. § 745.83, for compensation.

15. The Residence, which was the subject of the EPA Inspection, is residential housing built in 1920 and meets the definition of *target housing* under 15 U.S.C. § 2681(17).

16. During the EPA Inspection, EPA representatives observed that, in the course of its renovation of the Residence, that Respondent failed to perform the following requirements:

(a) Respondent failed to obtain initial certification as a renovation firm, as required by 40 C.F.R. § 745.81(a)(2)(ii).

(b) Respondent failed to assign a certified renovator to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b), as required by 40 C.F.R. § 745.89(d)(1).

(c) Respondent failed to provide the owner of the Residence with the EPA approved *Renovate Right* pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

(d) Respondent failed to 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, as required by 40 C.F.R. § 745.85 (a)(1).

### **Section V** **Violations**

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

#### **Count I**

17. Concerning the renovation performed at the Residence, Respondent failed to obtain initial certification as a renovation firm and was not a certified firm at the time of the renovation it performed at the Residence, as required by 40 C.F.R. § 745.81(a)(2)(ii).

18. Respondent's failure to perform the act indicated above is in 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 II**

19. Concerning the renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to assign a certified renovator to the project, failed to assure that the certified renovator provided on-the-job training for workers used on the project, failed to ensure that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and failed to ensure that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b), as required by 40 C.F.R. § 745.89(d)(1)

20. Respondent's failure to perform the acts indicated above is in 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 III**

21. Concerning the renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to provide the owner of the Residence with the EPA approved *Renovate Right* pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

22. Respondent's failure to perform the act indicated above is in 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 IV**

23. Concerning the renovation performed at the Residence, at the time of the EPA Inspection it was noted that Respondent failed to 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, as required by 40 C.F.R. § 745.85 (a)(1).

24. Respondent's failure to perform the act indicated above is in 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 VI**  
**Consent Agreement**

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

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

27. 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.

28. 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.

29. 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.

30. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty of One Thousand Three Hundred Seventy-Two Dollars (\$1,372), as specified in the Final Order.

31. 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.

32. 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 sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty of One Thousand Three Hundred Seventy-Two Dollars (\$1,372). 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**  
**CUSTOM BUILDERS RUSSELLVILLE, INC.**

Date: Dec 26 19

by Billie Custom Builders Russellville, Inc.

Owner  
TITLE

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

Date: 1/15/15

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

Date: 1/15/2015

By: Raymond C. Bosch  
Raymond C. Bosch  
Attorney Advisor  
Office of Regional Counsel

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

Date: 1-21-2015

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

IN THE MATTER OF Custom Builders Russellville, Inc., Respondent  
Docket No. TSCA-07-2015-0003

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 Contact for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to:

Custom Builders Russellville, Inc.  
11707 Old Route C  
Russellville, Missouri 65074

Dated: 1/21/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7