



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

September 21, 2012

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7668 0776

Spartan Painting
ATTN: Bret Story
P.O. Box 484
Haslett, Michigan 48840

Consent Agreement and Final Order in the Matter of
Spartan Painting, Docket No. TSCA-05-2012-0023

Dear Mr. Story:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 21, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,100 is to be paid in the manner described in paragraphs 55 and 56. Please be certain that the number **BD 2751247X023** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 21, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Blake".

Leslie Blake
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-05-2012-0023
)	
Spartan Painting, Inc.)	Proceeding to Assess a Civil Penalty
Bath, Michigan)	Under Section 16(a) of the Toxic Substances
)	Control Act, 15 U.S.C. § 2615(a)
)	
Respondent.)	
<hr/>		

RECEIVED
SEP 21 2012

Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Spartan Painting, Inc., a corporation with a place of business located at 7626 Herbison Road, Bath, Michigan 48808.
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, (Title X), Pub. L. No. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), 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 6; 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.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), requires EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

13. Pursuant to 402 of TSCA, 15 U.S.C. § 2682, EPA promulgated regulations at 40 C.F.R. Part 745, titled lead-based paint poisoning prevention in certain residential structures, prescribing procedures and requirements for the accreditation of training programs, procedures and requirements for the certification of individual and firms engaged in lead-based paint activities, and work practice standards for performing such activities. *See* 61 Fed. Reg. 45778 (August 29, 1996).

14. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, titled residential property renovation, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

15. Under 40 C.F.R. § 745.81(a), each firm that performs for compensation a renovation of target housing or a child occupied facility must be certified by EPA and by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child occupied facilities, and must comply with the specified work practice and recordkeeping requirements at 40 C.F.R. §§ 745.85-86 by April 22, 2010. EPA stated that it would not take enforcement action for violations of the firm certification requirement until October 1, 2010. *See* Memorandum from Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, dated June 18, 2010.

16. 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).

17. 40 C.F.R. § 745.83 defines “firm” to mean 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.

18. 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

19. 40 C.F.R. § 745.83 defines “renovator” to mean 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.

20. 40 C.F.R. § 745.103 defines “residential dwelling” as, among other things, a single family dwelling, including attached structures such as porches and stoops.

21. 40 C.F.R. § 745.103 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 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

22. 40 C.F.R. § 745.89 provides that firms that perform renovations for compensation must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. § 745.85(a).

23. 40 C.F.R. § 745.85(a)(2)(ii)(C) provides that, for exterior renovations, the 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.

24. 40 C.F.R. § 745.85(a)(4)(i) provides that the firm must contain waste from renovation activities so as to prevent releases of dust and debris before the waste is removed

from the work area for storage or disposal.

25. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation. This includes documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

26. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, which may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

27. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d), authorize the Administrator of EPA 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 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

General Allegations

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

29. On or before April 27, 2011, Respondent entered into a contract to power wash and paint the exterior of a single family residence (the Work) at 616 Willard Avenue in Lansing,

Michigan (the Property).

30. The Property was built in 1929.

31. The Property is “target housing,” as defined in 40 C.F.R. § 745.103.

32. The Property is a “residential dwelling,” as defined in 40 C.F.R. § 745.103.

33. The Work described in paragraph 29, above, is “renovation,” as defined at 40 C.F.R. § 745.83.

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

35. On or before April 27, 2011, Respondent began renovations described in paragraph 29, above.

36. When Respondent offered, in the form of a contract, to perform the renovations referenced in paragraph 29, above, no determination had been made by an inspector, risk assessor or certified renovator that the components of the Property affected by the renovation were free of lead-based paint, as set forth in 40 C.F.R. § 745.82(a).

37. When Respondent began the renovation referenced in paragraph 29, above, no determination had been made by an inspector, risk assessor or certified renovator that the components of the Property affected by the renovation were free of lead-based paint, as set forth at 40 C.F.R. § 745.82(a).

38. The renovation described in paragraph 29, above, does not qualify for an exception under 40 C.F.R. § 745.82(a).

39. Respondent was subject to the firm certification requirements at 40 C.F.R. § 745.89 when it offered to perform, in the form of the contract, the renovations referenced in paragraph 29, above.

40. Respondent was subject to the firm certification requirements at 40 C.F.R. § 745.89 when it performed the renovations referenced in paragraph 29, above.

41. Respondent was required to perform the renovations referenced in paragraph 29, 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)(1) and (6).

Count 1

42. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. Respondent did not apply to EPA for certification to perform renovations and therefore was not a certified firm when performing the renovation described in paragraph 29, above, as required by 40 C.F.R. § 745.89(a).

44. Respondent's failure to apply and obtain certification from EPA before performing the renovation described in paragraph 29, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

45. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

46. During the renovation described in paragraph 29, above, Respondent did not 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, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

47. Respondent's failure 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, whichever is greater, unless the property line prevents 10 feet of such ground covering, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

48. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

49. During the renovation described in paragraph 29, above, Respondent did not contain the waste from the renovation activities so as to prevent releases of dust of debris before the waste was removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i).

50. Respondent's failure to contain the waste from the renovation activities so as to prevent releases of dust of debris before the waste was removed from the work area for storage or disposal constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

51. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

52. Following the completion of the renovation described in paragraph 29, above, Respondent did not retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, as required by 40 C.F.R. § 745.86(a).

53. Respondent's failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E following completion of the renovation constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Civil Penalty

54. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$2,100. 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 violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, dated August 19, 2010, and the Pilot Renovation, Repair and Painting ("RRP") Rule Penalty Program for Micro-Businesses, dated May 3, 2012.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,100 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to

"Treasurer, United States of America," to:

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

The check must state the case title ("In the Matter of: Spartan Painting, Inc."), the docket number of this CAFO, and the billing document number.

56. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Leslie Blake (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Erik Olson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

61. 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.

62. 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.

63. Respondent certifies that it is complying with Section 402 of TSCA, 15 U.S.C. § 2682, and its implementing regulations at 40 C.F.R. Part 745.

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

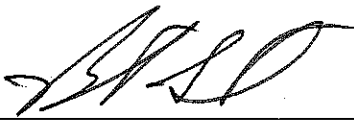
65. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorneys fees in this action.

67. This CAFO constitutes the entire agreement between the parties.

Spartan Painting, Inc., Respondent

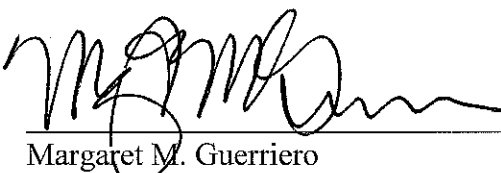
8-17-12
Date



Bret Story, President
Spartan Painting, Inc.

United States Environmental Protection Agency, Complainant

9/18/2012
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Spartan Painting, Inc.
Docket No. TSCA-05-2012-0023

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.

9-20-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY


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 Spartan Painting, was filed on September 7, 2012, 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 7668 0776 to:

Spartan Painting
ATTN: Bret Story
P.O. Box 484
Haslett, Michigan 48840

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Erik Olson, 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-05-2012-0023


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