



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

JAN 04 2017

REPLY TO THE ATTENTION OF

LC-8J

VIA EMAIL

Mr. Peter Berg
Patton, Hoversten & Berg, P.A.
215 Elm Avenue East
P.O. Box 249
Waseca, Minnesota 56093
Peter.Berg@phblawoffice.com

Consent Agreement and Final Order In the Matter of:
Waseca Quality Siding and Windows, Inc.
Docket No. TSCA-05-2017-0001


Dear Mr. Berg:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on January 4, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,000 is to be paid in the manner described in paragraphs 55 and 56. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,


Pamela Grace
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2017-0001
)
Waseca Quality Siding) Proceeding to Assess a Civil Penalty
and Window, Inc.) Under Section 16(a) of the Toxic
Waseca, Minnesota,) Substances Control Act, 15 U.S.C.
) § 2615(a)
Respondent.)
_____)

Consent Agreement and Final Order

Preliminary Statement



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 Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of 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. §§ 22.1(a)(5), 22.13(b), 22.18(b)(2)-(3).
2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Waseca Quality Siding and Window, Inc. (Waseca or Respondent), a company doing business in Waseca, Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of an administrative complaint, the action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 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.

8. Respondent neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives any and all remedies, claims for relief, rights to judicial or administrative review, rights to contest the allegations in this CAFO, and rights to appeal this CAFO that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including but not limited to its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 22.15(c), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06.

10. Respondent consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

11. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under the age of six; 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. *See* 42 U.S.C. § 4851.

12. Section 1021 of Title X amended TSCA by adding Sections 401-12, entitled Lead Exposure Reduction, 15 U.S.C. §§ 2681-92.

13. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations set work practice standards and ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair and Painting Program Rule (RRP Rule).

14. Section 407 of TSCA, 15 U.S.C. § 2687, required that the regulations promulgated by the EPA Administrator include such recordkeeping and reporting requirements as may be necessary to ensure the effective implementation of TSCA Subchapter IV (15 U.S.C. §§ 2681-92). These regulations are codified at 40 C.F.R. Part 745, Subpart E.

15. Pursuant to EPA's amendments to the RRP Rule in April 2008, on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (b). 40 C.F.R.

§ 745.81(a)(2)(ii).

16. On or after July 6, 2010, all renovations must be performed in accordance with the

work practice standards in 40 C.F.R. § 745.85 in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(4)(ii).

17. Under 40 C.F.R. § 745.82(a), 40 C.F.R. Part 745, Subpart E is applicable to renovations of target housing performed for compensation.

18. Under 40 C.F.R. § 745.83, a “firm” is 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.

19. Under 40 C.F.R. § 745.83, a “person” is any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

20. Under 40 C.F.R. § 745.83, “renovation” is 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.

21. Under 40 C.F.R. § 745.83, a “renovator” is 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.

22. Under 40 C.F.R. § 745.103, a “residential dwelling” is a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

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

24. Under 40 C.F.R. § 745.103, “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

25. Under 40 C.F.R. § 745.83, “work area” means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

26. Under 40 C.F.R. § 745.83, “pamphlet” means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*

developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

27. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of the RRP Rule, 40 C.F.R. Part 745, Subparts E, L, and Q, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

28. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes 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 409 of TSCA, 15 U.S.C. § 2689. 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 \$27,500 per day of violation that occurred from January 31, 1997, through March 15, 2004, to \$32,500 per day of violation for violations that occurred from March 16, 2004 through January 12, 2009, and to \$37,500 for violations that occurred after January 12, 2009.

General Allegations

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as if set forth in this paragraph.

30. At all times relevant to this CAFO, Respondent was a domestic corporation registered and doing business in Minnesota.

31. Respondent was therefore a “person” and a “firm,” as defined at 40 C.F.R. § 745.83, at all times relevant to this CAFO.

32. During or around October 2013 and November 2013, Respondent performed (or directed workers to perform) for compensation renovations at a residential home in Owatonna, Minnesota, a dwelling built in or around 1939 (“Owatonna property”).

33. The Owatonna property is a “residential dwelling” and “target housing” as defined at 40 C.F.R. § 745.103.

34. Respondent removed and replaced approximately 8 windows, which disturbed and removed painted surfaces and components and generated paint dust and debris at the Owatonna property.

35. Respondent’s work at the Owatonna property during or around October 2013 and November 2013 was a “renovation” as defined at 40 C.F.R. § 745.83.

36. Fredrick Flemming and Chris Flemming conducted renovation work on the Owatonna property for Waseca Quality Siding and Window, Inc., during or around October 2013 and November 2013.

37. At all times relevant to this CAFO, Fredrick Flemming and Chris Flemming were “renovators” as defined at 40 C.F.R. § 745.83, at all times relevant to this CAFO.

Counts

Count 1: Performance of Renovations in Target Housing without Firm Certification

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

39. Under 40 C.F.R. § 745.81(a)(2) and 745.89, firms that perform renovations on target housing must apply for EPA certification and become certified by EPA before performing the renovations.

40. During the time Respondent performed renovations on the Owatonna property in or around October 2013 and November 2013, Respondent was not certified by EPA as a firm qualified to perform renovation activities in target housing.

41. Respondent's performance of renovations in target housing without firm certification from EPA constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 2: Failure to Provide Pamphlet to Homeowner in Advance of Renovation

42. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

43. Under 40 C.F.R. § 745.84(a)(1), the firm performing the renovation in target housing must provide the owner of the target housing with the pamphlet and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.

44. Respondent failed to provide the owner of the Owatonna property with the pamphlet and failed to obtain from the owner a written acknowledgement that the owner has received the pamphlet or to obtain a certificate of mailing at least 7 days prior to the renovation activities described in paragraphs 32 and 34, above.

45. Respondent's failure to provide the owner of the Owatonna property with the pamphlet and to obtain from the owner a written acknowledgement that the owner has received

the pamphlet or to obtain a certificate of mailing at least 7 days prior to the renovation activities described in paragraphs 32 and 34, above, constitutes a violation of 40 C.F.R. § 745.84(a)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 3: Failure to Collect All Paint Chips and Debris and Seal in Heavy-Duty Bag after Renovations

46. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

47. Under 40 C.F.R. § 745.85(a)(5)(i)(A), the firm performing renovations in target housing must collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it.

48. Respondent failed to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it while performing the renovation activities described in paragraphs 32 and 34, above, at the Owatonna property.

49. Respondent's failure to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it while performing the renovation activities described in paragraphs 32 and 34, above, at the Owatonna property constitutes a violation of 40 C.F.R. § 745.85(a)(5)(i)(A), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 4: Failure to Retain and Make Available All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E

50. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

51. Under 40 C.F.R. § 745.86(a), 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. Under 40 C.F.R. § 745.86(b), such records include documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, that a certified renovator was assigned to the project, and that the certified renovator performed or directed workers who performed the renovation activities.

52. Respondent failed or refused to establish and maintain records, or to make available such records, according to the requirements of 40 C.F.R. § 745.86(a) and 40 C.F.R. § 745.86(b).

53. Respondent's failure to establish and maintain, or to make available records, violates 40 C.F.R. § 745.86(a); 40 C.F.R. § 745.86(b); 40 C.F.R. §§ 745.87(a),(b); and 15 U.S.C. § 2689.

Civil Penalty

54. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant has determined that an appropriate civil penalty to settle this action is \$4,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged, and, with respect to Respondent, its ability to pay, the effect on Respondent's ability to continue to do business, any history of prior such violations, Respondent's 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.

55. Within 30 days after the effective date of this CAFO, Respondent must pay the

\$4,000 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 note the following: the case title ("In the Matter of Waseca Quality Siding and Window, Inc.") and the docket number of this CAFO.

56. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 55. Respondent must send a copy of the check and transmittal letter to:

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

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

Jillian Rountree (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 the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, by action 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 interest, fees, and penalties 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, by the Secretary of the Treasury. 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.

60. Within 60 days of the effective date of this CAFO, Respondent shall submit a copy of the certificate of dissolution from the Minnesota Secretary of State, § 302A.734, showing the date Respondent is dissolved. Respondent shall send this copy to Pamela Grace and Jillian Rountree at the addresses in paragraph 56. Further, by its signature below, Respondent certifies that if it continues in business or completes any further renovations before its dissolution, the firm will become certified under 40 C.F.R. § 745.89 before conducting such renovations and it will follow all RRP Rule requirements as set forth in 40 C.F.R. Part 745, Subpart E.

61. Should Respondent fail to provide the certificate of dissolution or to dissolve as a business in Minnesota as specified in paragraph 60, it shall pay a penalty of \$8,140, less any penalty already paid, within 30 days of the date the certificate is due as stated in paragraph 60, but also including any extensions of that deadline granted in writing by EPA. The payment shall be by the methods and with the notice prescribed in paragraphs 55 and 56.

62. Respondent's forthcoming dissolution was an important consideration in the calculation of the penalty in this matter under 15 U.S.C. § 2615(a). By its signature below,

Respondent certifies that its dissolution is not the result of this matter.

General Provisions

63. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

64. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: rountree.jillian@epa.gov (for Complainant) and Perry.Berg@phblawoffice.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

65. This CAFO resolves Respondent’s liability for the federal civil penalties for the violations alleged in the CAFO and no others.

66. This CAFO does not affect the rights of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

67. This CAFO does not relieve Respondent’s responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, and local laws.

68. By its signature below, Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

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

70. Each person signing this CAFO 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.

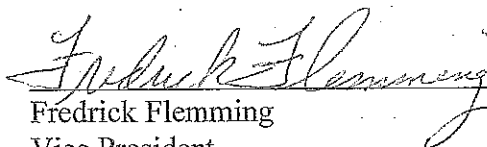
71. Each party agrees to bear its own costs and attorneys' fees in this action.

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

In the Matter of: Waseca Quality Siding and Window, Inc.
Docket No. TSCA-05-2017-0001

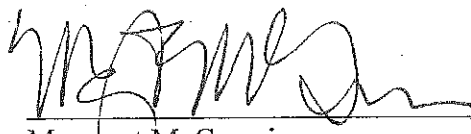
Waseca Quality Siding and Window, Inc., Respondent

11-28-16
Date


Fredrick Flemming
Vice President
Waseca Quality Siding and Window, Inc.

U.S. Environmental Protection Agency, Complainant

12/28/2016
Date

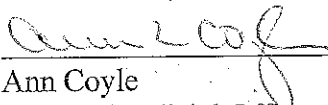

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: Waseca Quality Siding and Window, Inc.
Docket No. TSCA-05-2017-0001

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.

January 3, 2017
Date .



Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Waseca Quality Siding and Window, Inc.
Docket Number: TSCA-05-2017-0001

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number TSCA-05-2017-0001, which was filed on

January 4, 2017 in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent:

Perry Berg
Patton Hoversten & Berg, P.A.
Perry.Berg@phblawoffice.com

Copy by E-mail to
Attorney for Complainant:

Jillian Rountree
rountree.jillian@epa.gov

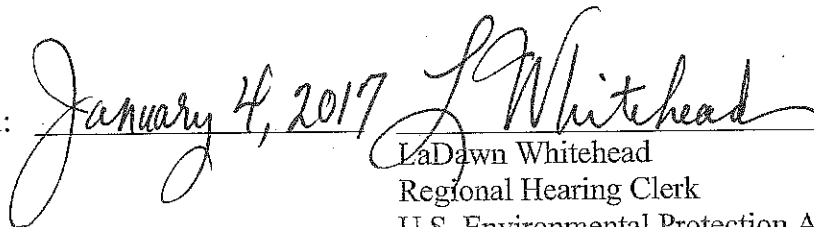
Copy by E-mail to
EPA enforcement staff contact:

Pamela Grace
grace.pamela@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: January 4, 2017



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5