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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2016-0048
)	
DAN HEMMER CONSTRUCTION, INC.)	CONSENT AGREEMENT
)	
Boise, Idaho)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Dan Hemmer Construction, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with, among other things, any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities, including certification of individuals and firms for renovations and work practice standards for renovations. These rules are codified at 40 C.F.R. Part 745, subpart E, Residential Property Renovation.

3.2. 40 C.F.R. Part 745, Subpart E applies to all renovations performed for compensation in target housing.

3.3. “Target housing” is defined under Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and at 40 C.F.R. § 745.103 to mean “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities... .”

3.4. “Person” is defined at 40 C.F.R. § 745.83 to mean “any natural or judicial person including any individual, corporation, partnership, or association... .”

3.5. “Firm” is defined at 40 C.F.R. § 745.83 to mean “a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity... .”

3.6. “Renovation” is defined at 40 C.F.R. § 745.83 to mean “the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces...” and includes “scraping.”

3.7. “Renovator” is defined at 40 C.F.R. § 745.83 as “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.”

3.8. Respondent is a corporation organized in the State of Idaho.

3.9. Respondent is therefore a “firm” within the meaning of 40 C.F.R. § 745.83.

3.10. In June 19, 2015, Respondent performed work for compensation at a house located at 805 North 17th Street, Boise, Idaho, which was built in 1910 (Dan Hemmer Construction, Inc.’s renovation).

3.11. The work Respondent conducted included renovation work to existing home, which resulted in the disturbance of painted surfaces.

3.12. Therefore, Respondent performed a “renovation” on “target housing,” as these terms are as defined at 40 C.F.R. § 745.83.

COUNT I

3.13. Under 40 C.F.R. §§ 745.85(a)(1) and 745.89(d)(3), “firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area. . . . 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.”

3.14. During the Dan Hemmer Construction, Inc.’s renovation, Respondent failed to post signs warning occupants and other persons not involved in the renovation activities to remain outside the work area.

3.15. Respondent’s failure to post warning signs is a violation of 40 C.F.R. §§ 745.85(a)(1) and 745.89(d)(3).

COUNT II

3.16. Under 40 C.F.R. §§ 745.85(a)(2)(i)(C), firms conducting renovations must close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

3.17. During the Dan Hemmer Construction, Inc.’s renovation, Respondent did not confine dust and debris to the work area.

3.18. Respondent’s failure to close windows and doors in the work area, and/or cover doors with plastic sheeting is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C).

COUNT III

3.19. Under 40 C.F.R. §§ 745.85(a)(2)(ii)(D), the renovation firm conducting the exterior renovation must “erect vertical containment or equivalent extra precautions in

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
- 4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is **\$1,456** (the "Assessed Penalty").
- 4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.
- 4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties” if the renovation will affect surfaces within 10 feet of the property line.

3.20. During the Dan Hemmer Construction, Inc.’s renovation, Respondent did not erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and paint chips from the renovation did not contaminate adjacent buildings or migrate to adjacent properties.

3.21. The Dan Hemmer Construction, Inc.’s renovation affected surfaces within 10 feet of the property line.

3.22. Respondent’s failure to erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and paint chips from the renovation did not contaminate adjacent buildings or migrate to adjacent properties is a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(D).

COUNT IV

3.23. Under 40 C.F.R. §§ 745.85(a)(4)(i), the renovation firm must contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

3.24. During the Dan Hemmer Construction, Inc.’s renovation, Respondent did not contain waste to prevent releases of dust and debris before the waste is removed from the work area.

3.25. Respondent’s failure to prevent releases of dust and debris before the waste is removed from the work area is a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(D).

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.Teresa@epa.gov

Kim Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Farnham.Kim@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)

DOCKET NO. TSCA-10-2016-0048

DAN HEMMER CONSTRUCTION, INC.)

FINAL ORDER

Boise, Idaho)

Respondent.)

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

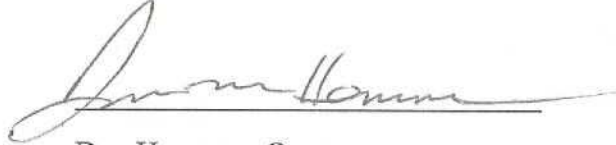
1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

1-30-16

FOR RESPONDENT:



Dan Hemmer, Owner
Dan Hemmer Construction, Inc.

DATED:

2/16/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 25th day of February, 2016.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Dan Hemmer Construction, Inc., Docket No.: TSCA-10-2016-0048**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Kim M. Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Dan Hemmer
Dan Hemmer Construction, Inc.
11797 West Rader Drive
Boise, Idaho 83713

DATED this 25 day of February, 2016.



TERESA LUNA
Regional Hearing Clerk
EPA Region 10

