



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 8**  
**1595 WYNKOOP STREET**  
**DENVER, CO 80202-1129**  
**Phone 800-227-8917**  
**http://www.epa.gov/region08**

2013 JUL -8 PM 1:23

FILED  
 EPA REGION VIII  
 HEARING CLERK

**DOCKET NO.: TSCA-08-2013-0001**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>VAN DYK CONSTRUCTION</b>	)	<b>FINAL ORDER</b>
12905 Division Street, Unit A	)	
Littleton, CO 80125	)	
	)	
Respondent	)	
	)	

Pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

**SO ORDERED THIS** 8<sup>th</sup> **Day of** July, 2013

Elyana R. Sutin  
 Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 JUL -8 PM 1:24

IN THE MATTER OF: )  
)  
Van Dyk Construction )  
12905 Division Street, Unit A )  
Littleton, CO 80125 )  
)  
Respondent. )  
)

COMBINED COMPLAINT AND  
CONSENT AGREEMENT

DOCKET NO. : TSCA-08-2013-0001

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Complainant, the U.S. Environmental Protection Agency (EPA), Region 8, and Respondent, Van Dyk Construction, by their undersigned representatives, hereby consent and agree as follows:

JURISDICTION

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act"), 42 U.S.C. § 4851 et seq., and the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.
2. EPA regulations authorized by the statutes are set out in part 745, subpart E of title 40 of the Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA, 15 U.S.C. § 2615.
3. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, ("Rules of Practice"), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (hereinafter Agreement), intended to simultaneously commence and conclude this matter is authorized by the Rules of Practice, 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.

RESPONDENT

4. The Respondent is a "firm" and a "renovator" under 40 C.F.R. § 745.83.
5. The Respondent conducted residential renovation at a property located at 4470 South Pennsylvania Street, Englewood, Colorado during January 2013.

ALLEGED VIOLATIONS

6. On January 30, 2013, an authorized representative of the EPA conducted a compliance inspection at the Respondent's jobsite located 4470 South Pennsylvania Street, Englewood, Colorado, to determine compliance with the Renovation, Repair, and Painting (RRP) Rule promulgated at 40 C.F.R part 745 subpart E under Section 402 of TSCA.

7. The jobsite referenced in paragraph 6 is a residential housing property constructed prior to 1978.
8. During the inspection, the EPA found that the Respondent had failed to comply with Section 402 of TSCA, 15 U.S.C. § 2682.
9. The 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. This is a violation of 40 C.F.R. § 745.85.

#### SETTLEMENT

10. To determine the amount of the civil penalty to be assessed, EPA considered, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of TSCA, or lack thereof, and degree of culpability.
11. In consideration of the facts and circumstances of this matter, the parties agree to enter in this Agreement in order to settle the violation for the penalty amount of **\$600 (six hundred dollars)** to be paid in accordance with the attached document *Instructions for Making a Payment*.
12. In signing this Agreement, Respondent: (1) admits that Respondent was subject to the RRP requirements (40 C.F.R. § 745 subpart E) at the time the work described in paragraph 5 was being conducted; (2) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (3) neither admits nor denies the factual allegations contained herein; and (4) consents to the assessment of this penalty.
13. Upon the effective date of the Agreement, payment of the civil penalty shall constitute full settlement of the civil claim alleged herein.
14. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
15. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.
16. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing, including but not limited to the right to contest the allegations contained herein, and to appeal this Agreement.
17. Each party shall bear its own costs and attorney fees, if any.

18. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
19. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Agreement and to bind the Respondent to the terms and conditions of this Agreement.
20. The parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.
21. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Agreement contains all terms of the settlement agreed to by the parties.
22. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

**In the Matter of: Van Dyk Construction**  
**Docket No: TSCA-08-2013-0001**  
**(Continued)**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,**

**Complainant**

Date: July 2, 2013

By: Cheryl A. Turcotte  
Cheryl Turcotte, Supervisor  
Toxics Enforcement Unit  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-AT)  
U.S. Environmental Protection Agency,  
Region 8

Date: July 1, 2015

By: James H. Eppers  
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-L)  
U.S. Environmental Protection Agency,  
Region 8

**In the Matter of: Van Dyk Construction**  
**Docket No: TSCA-08-2013-0001**  
**(Continued)**

**Van Dyk Construction,**  
**Respondent**

Date: 6-24-12

By: 

Name: John Van Dyk

Title: President

## INSTRUCTIONS FOR MAKING A PAYMENT

Within **thirty (30) days** after receiving the Final Order, the Respondent shall remit payment in the amount of **\$600.00 (six hundred dollars and 00 cents)**. The payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

### **REGULAR MAIL:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

### **WIRE TRANSFERS:**

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 "

### **FEDERAL EXPRESS, AIRBORNE, OR OTHER COMMERCIAL CARRIER:**

U.S. Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

### **ACH TRANSACTIONS (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

WWW.PAY.GOV

(Enter sfo 1.1 in the search field

Open form and complete required fields.)

A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Tina Artemis  
Regional Hearing Clerk  
Mail Code 8RC  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Alexas Gilbert  
RRP Enforcement Coordinator  
Mail Code 8ENF-AT  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **VAN DYK CONSTRUCTION; DOCKET NO.: TSCA-08-2013-0001**. The documents were filed with the Regional Hearing Clerk on July 8, 2013.

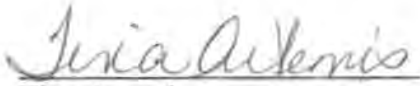
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 8, 2013, to:

John Van Dyk, President  
Van Dyk Construction  
12905 Division Street, Unit A  
Littleton, CO 80125

E-mailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

July 8, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk