

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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: In the Matter of :
: :
: **Bogy Construction, LLC** : CONSENT AGREEMENT
: : AND
: : FINAL ORDER
: :
: Respondent : Docket No.
: : TSCA-02-2018-9166
: :
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and

22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Bogy Construction, LLC (“Respondent”).
2. Respondent’s primary place of business is located at 21 Montgomery Avenue, Rocky Hill, New Jersey 08553.
3. Respondent is engaged in the business of residential construction, repair and improvement.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83. Respondent applied to EPA for firm certification on March 7, 2018 (Application number: R 570466) and it is now waiting for its certification to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 C.F.R. Part 745.89.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745.
6. On or about November 3, 2015, representatives of the United States Environmental Protection Agency, Region 2 (“EPA”) performed an inspection (“EPA Inspection”) of the renovation activities being performed by Respondent at 28 Bank Street, Princeton, NJ 08542 (the “Property”). The Property is “target housing,” as that term is defined by Section 401 of TSCA, 15 U.S.C. § 2681, and 40 C.F.R. §745.103.
7. Based on the EPA Inspection and information obtained from the Princeton Health Department (“PHD”) in relation to an inspection the PHD performed of the Property on November 2, 2015, EPA determined that the renovation work performed by Respondent at the

Property was subject to the requirements set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (RRP) Rule”).

8. EPA also determined that Respondent failed to provide the owner of the unit with the Renovate Right pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

9. EPA further determined that Respondent had failed to post signs, as required by 40 CFR § 745.85(a)(1).

10. EPA further determined that Respondent had failed to cover the ground with plastic sheeting or other impermeable material to collect falling paint debris, as required by 40 CFR Part 745.85(a)(2)(ii)(C).

11. EPA further determined that Respondent had failed to ensure that dust and debris do not migrate to adjacent properties, as required by 40 C.F.R. § 745.85(a)(2)(ii)(D).

12. EPA further determined that Respondent had failed to establish and maintain records, as required by 40 C.F.R. § 745.87(b).

13. Respondent’s failures to comply with the RRP Rule constitute violations of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be assessed under TSCA § 16(a), 15 U.S.C. § 2615(a).

14. On September 13, 2017, EPA and Respondent held an informal pre-filing settlement conference at Respondent’s request to discuss EPA’s findings with regard to Respondent’s failures to comply with TSCA and the RRP Rule during the renovation at the Property.

15. At the September 13, 2017 settlement conference, Respondent submitted financial documentation demonstrating its current gross annual revenue

16. As a result of the informal settlement conference, the parties agreed to enter into this Consent Agreement.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent certifies that it is currently in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745.
2. Respondent further certifies that:
 - a) The financial information and documentation it submitted to EPA on September 13, 2017, is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. EPA retains the right to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation and/or representations made to EPA regarding Respondent's current financial condition is false or, in any material respect, inaccurate.
 - b) Respondent has requested of EPA that payment of the civil penalty be in installments because of the financial condition of Respondent, *viz.* a one-time payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.
3. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations
4. For the purposes of this Consent Agreement, Respondent: (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations described in the "Findings of Fact and Conclusions of Law" section, above; and (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

5. Respondent shall pay, by cashier's or certified check or electronic payment via Fedwire, a civil penalty in the amount of **FOURTEEN THOUSAND, SIX HUNDRED, and NINETEEN DOLLARS (\$14,619)**. Installment payments are due as follows:

- a) **FOUR THOUSAND EIGHT HUNDRED and SEVENTY-THREE DOLLARS (\$4, 873)** is due on or before **thirty (30) calendar days** from the Effective Date of the CA/FO.
- b) **FOUR THOUSAND EIGHT HUNDRED and SEVENTY-THREE DOLLARS (\$4, 873)** is due on or before **ninety (90) calendar days** from the Effective Date of the CA/FO.
- c) **FOUR THOUSAND EIGHT HUNDRED and SEVENTY-THREE DOLLARS (\$4, 873)** is due on or before **one hundred eighty (180) calendar days** from the Effective Date of the CA/FO.

6. Each payment must be received at the address listed in Paragraph 9 of this Consent Agreement, below, or each Fedwire must be received by the Federal Reserve Bank of New York, on or before its due date specified above (the date by which each payment must be received shall hereafter be referred to as the "due date").

a. If Respondent fails to pay any of the installments required above, by its due date, Respondents shall also be liable to EPA for an additional stipulated penalty of \$1000 for each such failure. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondents' receipt from EPA of a written demand for payment of the penalties. Payment of stipulated payments shall be made in the same manner as prescribed in Paragraph 9, below, for payment of the civil penalty installments. Stipulated penalties shall accrue regardless of whether EPA has notified Respondents of the violation or has made a

demand for payment, but need only be paid upon demand. EPA, in its sole discretion, may reduce or eliminate any stipulated penalty due under this sub-paragraph.

b. Failure to pay the full amount of the penalty, or any stipulated penalty, according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection or other appropriate action.

c. Further, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

d. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

7. In the event of Respondent's failure to make any payment when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest and stipulated penalties then unpaid immediately due and payable.

8. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

9. If a payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, as set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, if Respondent chooses to pay by Fedwire, Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read "**D68010727
Environmental Protection Agency**"
- 6) Name of Respondent: **Bogy Construction LLC**
- 7) Case Docket Number: **TSCA-02-2018-9166**

10. The civil penalties provided for herein are "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

11. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Demian Ellis
Enforcement Coordinator
Pesticides and Toxic Substances Branch – Lead Team
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837

Copy of the cover page or transmittal shall be sent via e-mail to:

Rudolph Perez, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA will address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Darko Radojic, President
Bogy Construction, LLC.
21 Montgomery Avenue
Rocky Hill, New Jersey 08553

12. Full payment of the penalty described in paragraph 5 of this Consent Agreement, above, shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 8 through 12 in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case 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.

13. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.

14. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

15. Respondent consents to the issuance of the accompanying Final Order.

16. Respondent agrees that all terms of settlement are set forth herein.

17. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

18. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

19. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any

requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

20. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

21. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

22. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

23. Each party hereto agrees to bear its own costs and fees in this matter.

24. Respondent consents to service upon them of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Bogy Construction, LLC.
Docket Number TSCA-02-2018-9166

Bogy Construction, LLC

RESPONDENT:

BY: *Danko Padojic*
(SIGNATURE)

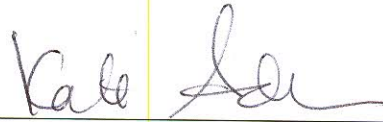
NAME: DANKO PADOJIC
(PLEASE PRINT)


TITLE: owner

DATE: 3/27/18

In the Matter of Bogy Construction, LLC.
Docket Number TSCA-02-2018-9166

COMPLAINANT:





Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

MAR 30 2018


DATE: _____

In the Matter of Bogy Construction, LLC.
Docket Number TSCA-02-2018-9166

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement resolving In the Matter of Bogy Construction, LLC bearing Docket Number TSCA-02-2018-9166. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order.

The Effective Date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency –
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Date: April 3, 2018

In the Matter of Bogy Construction, LLC.
Docket Number TSCA-02-2018-9166

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Darko Radojcic, President
Bogy Construction, LLC.
21 Montgomery Avenue
Rocky Hill, New Jersey 08553

Dated: April 17, 2018 Yolanda Majette
New York, New York Yolanda Majette,
WTS Branch Secretary