

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2017 FEB -7 AM 11:01

BEFORE THE ADMINISTRATOR

In the Matter of)

D.A. Bates Painting, Inc.)

Respondent)

) Docket No. TSCA-07-2017-0001
)
)
)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA), Region 7 and D.A. Bates Painting, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Lead-Based Paint Renovation, Repair and Painting Rule*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.

4. Respondent is D.A. Bates Painting, Inc., a company doing business in the state of Missouri.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*. See *Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities*, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See *Lead; Requirements for Hazard Education Before Renovation of Target Housing*, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standard for renovations that disturb lead-based paint in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The requirements set forth in the regulations at 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R. § 745.82. 40 C.F.R. §§ 745.80(a) and 745.82(a).

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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.

11. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as 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.

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as 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.

14. The regulation at 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82.

15. The regulation at 40 C.F.R. § 745.89(a)(1) states firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

16. The regulation at 40 C.F.R. § 745.84(a)(1) states that firms performing renovations must provide the property owner with the EPA approved lead hazard information pamphlet per the requirements of 40 C.F.R. § 745.84(a)(1).

17. The regulation at 40 C.F.R. § 745.81(a)(4)(ii) states that all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The “Work Practice Standards” that must be followed by firms performing renovations on target housing are set forth at 40 C.F.R. § 745.85. The Work Practice Standards include, but are not limited to:

- (a) Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants, and other persons not involved in renovation activities, to remain outside of the work area; prepare, to the extent practicable, signs in the primary language of the

occupants; and/or post signs before beginning the renovation and make sure they remain in place and readable until post-renovation cleaning verification have been completed.

- (b) Pursuant to 40 C.F.R. § 745.85(a)(4)(i), firms must contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered;
- (c) Pursuant to 40 C.F.R. § 745.85(a)(4)(ii), firms performing renovations must, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris;
- (d) Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), firms performing renovations, before beginning the renovation, 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. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

18. The regulation at 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 this subpart for a period of 3 years following completion of the renovation.

19. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

20. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize 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. 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 \$37,500 for violations that occurred after January 12, 2009.

General Factual Allegations

21. On or about July 23, 2015, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted a record inspection at Respondent's place of

business to evaluate Respondent's compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule ("EPA inspection"). A copy of the inspection report was mailed to Respondent on September 4, 2015.

22. Respondent is, and at all times referred to herein was, a company doing business in the state of Missouri under.

23. Respondent, at all times referred to herein, was a "person" and "firm" as defined by 40 C.F.R. § 745.83.

24. At the time of the EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was engaged in a "renovation" of the Property as defined by 40 C.F.R. § 745.83.

25. At all times relevant to this Consent Agreement and Final Order, Respondent's renovation was a "renovation for compensation" per 40 C.F.R. § 745.82(a).

26. At all times relevant to this Consent Agreement and Final Order, the Properties were "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Property at 451 E. 80th Terrace in Kansas City, Missouri was built in 1952, the Property at 627 W. 62nd Street was built in 1920, and the Property at 652 W. 62nd Street in Kansas City, Missouri was built in 1921.

27. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent's renovation activities at the Property.

Allegations of Violation

28. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

29. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

30. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

31. The EPA inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Properties.

32. Respondent's failure to apply to the EPA for certification is a violation of 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

33. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

34. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations must provide the property owner with the EPA approved lead hazard information pamphlet per the requirements of 40 C.F.R. § 745.84(a)(1).

35. The EPA inspection revealed that Respondent failed to provide the property owner with the EPA approved lead hazard information pamphlet at the 652 W. 62nd Street Property.

36. Respondent's failure to provide the property owner with the EPA approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

37. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

38. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(1) requires firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

39. The EPA inspection revealed that Respondent failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area at the 451 E. 80th Terrace Property.

40. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of the work area is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

41. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

42. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(i) requires firms to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal.

43. The EPA inspection revealed that Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal at the 451 E. 80th Terrace Property.

44. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

45. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

46. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(ii) requires firms performing renovations to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

47. The EPA inspection revealed that Respondent failed to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevent access to dust and debris at the 451 E. 80th Terrace Property.

48. Respondent's failure to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevent access to dust and debris is a violation of 40 C.F.R. § 745.85(a)(4)(ii) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

49. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

50. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(ii)(C) requires firms performing renovations, before beginning the renovation, 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.

51. The EPA inspection revealed that Respondent failed to, before beginning the renovation, 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 at the 451 E. 80th Terrace Property.

52. Respondent's failure to, before beginning the renovation, 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 is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7, Count 8, and Count 9

53. The facts stated in Paragraphs 21 through 28 above are herein incorporated.

54. Pursuant to 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 this subpart for a period of 3 years following completion of the renovation.

55. The EPA inspection revealed that Respondent failed to retain and make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation for the 451 E. 80th Terrace, 627 W. 62nd Street, and 652 W. 62nd Street Properties.

56. Respondent's failure to retain and make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation is a violation of 40 C.F.R. § 745.86(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

57. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth above;
- (b) neither admits nor denies the specific factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified in this Agreement;

- (f) consents to any stated Permit Action;
- (g) waives any right to contest the alleged violations of law set forth in this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

58. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

Penalty Payment

59. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated civil penalty. The EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), and has determined that the appropriate penalty for the violation(s) is Two Hundred Ninety-Two Dollars and Seventy Six Cents (\$292.76). This penalty has been adjusted to reflect Respondent's size of business.

60. Respondent shall pay the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

62. Respondent understands that its failure to timely pay any portion of the civil

penalty or any portion of a stipulated penalty as stated in Paragraph 59 may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty days and an additional \$15 will be charge for each subsequent thirty day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent per annum penalty (late charge) may be assessed on any amount not paid within ninety days of the due date.

Conditions

63. Respondent certifies by the signing of this Consent Agreement and Final Order that it has received EPA firm certification, and is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

Effect of Settlement and Reservation of Rights

64. Payment of the civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. Part 745, Subpart E, alleged in this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the TSCA or other applicable law.

65. The effect of settlement described in Paragraph 64 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 63 of this Consent Agreement and Final Order.

General Provisions

66. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

67. By signing this Agreement, the undersigned representative of Complainant certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

68. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
D.A. BATES PAINTING, INC.

Date: 12/14/16

By: Donna Vaughan

Donna Vaughan
Print Name

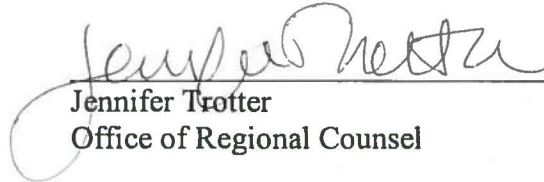
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/4/2017



Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 2-27-16



Jennifer Trotter
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Feb. 7, 2017
Date

IN THE MATTER Of D.A. Bates Painting, Inc., Respondent
Docket No. TSCA-07-2017-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via Email to Attorney for Complainant:

trotter.jennifer@epa.gov

Copy via First Class Mail to Respondent:

Ms. Vaughn
D.A. Bates Painting, Inc.
11525 Locust Street
Kansas City, Missouri 64131

Dated: 2/7/17



Kathy Robinson
Hearing Clerk, Region 7