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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No.: TSCA-08-2023-0005

IN THE MATTER OF: )  
)  
Yanish Custom Exteriors )  
2000 Lovett Ave )  
Bismarck, ND 58504 )  
)  
Respondent )

**EXPEDITED SETTLEMENT AGREEMENT**

Complainant, the authorized representative of the United States Environmental Protection Agency, and Respondent, Yanish Custom Exteriors, by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Expedited Settlement Agreement (the Agreement) is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.

5. "Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. 15 U.S.C. § 2681(17).
6. "Renovation" means 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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. EPA may assess a civil penalty of up to \$46,989 for each violation of TSCA section 409. 15 U.S.C. § 2615, 40 C.F.R. part 19; 88 Fed. Reg. 988 ((Jan. 6, 2023).

### III. RESPONDENT

8. Respondent is a company doing business in the State of North Dakota.
9. Respondent is a "person" for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689.
10. Respondent is a "firm" as that term is defined in 40 C.F.R. § 745.83.

### IV. ALLEGED VIOLATIONS

11. On March 18, 2022, the EPA sent Respondent an Information Request Letter (IRL) and on August 18, 2022, the EPA conducted an inspection at Respondent's office. The purpose of the IRL and inspection was to assess Yanish Custom Exteriors' compliance with the RRP Rule.
12. Based on information provided to the EPA in response to the IRL and during the inspection, Respondent engaged in work on 11 jobsites in the Bismarck, ND area.
13. The Jobsites are residential properties constructed prior to 1978 and are "target housing" as that term is defined in 15 U.S.C. § 2681 (17).
14. Respondent conducted a "renovation" as that term is defined at 40 C.F.R. § 745.83, by performing window replacements.
15. Firms performing renovations on target housing must maintain certification pursuant to 40 C.F.R. § 745.89(b).
16. Respondent became initially certified on or about July 8, 2010, pursuant to 40 C.F.R. § 745.89(a).
17. To maintain certification a firm must be re-certified by EPA every five years pursuant to 40 C.F.R. § 745.89(b).



18. Respondent's certification expired on July 22, 2015 and did not obtain re-certification.
19. Respondent's failure to obtain re-certification from the EPA prior to performing a renovation on target housing, constitutes a violation of 40 C.F.R. § 745.89(b) and section 409 of TSCA, 15 U.S.C. § 2689.
20. Firms performing renovations on target housing are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule, for a period of three (3) years following the completion of the renovation activities, as required by 40 C.F.R. § 745.86(a).
21. Respondent failed to retain or produce, upon request by EPA, all records necessary to demonstrate compliance with the RRP Rule in violation of 40 C.F.R. § 745.86.
22. Respondent's failure to retain or produce the required records constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

#### VI. SETTLEMENT

23. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
24. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and based in part on the size of Respondent's business, the nature, circumstances, extent and gravity of the violations alleged, and other relevant factors, the EPA agrees that an appropriate civil penalty to settle this matter is two thousand dollars (\$2000).
25. By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Agreement have been corrected, and Respondent has submitted true and accurate documentation of such correction; (2) Respondent has provided payment of the civil penalty; and (3) Respondent releases that penalty to the EPA upon incorporation of the Agreement into a final order.
26. Respondent agrees that the penalty specified in this Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
27. This settlement is subject to the following terms and conditions with respect to the violations alleged:
  - a. Respondent, by signing below, admits the jurisdictional allegations of the Agreement, neither admits nor denies the specific factual allegations contained in the Agreement and consents to the assessment of the penalty as stated above.

- b. Each party to this action shall bear its own costs and attorney fees, if any.
  - c. Payment by Respondent shall constitute a waiver of any and all available rights to judicial or administrative review or other remedies that the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Agreement, including any right to appeal the final order.
28. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in this Agreement.
29. This Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to, the following:
- a. Claims based on a failure by Respondent to meet a requirement of this Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
  - b. Claims based on criminal liability; and,
  - c. Claims based on any other violations of TSCA or federal or state law.
30. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's 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.
31. The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of the Agreement and to bind Respondent to the terms and conditions of this Agreement.
32. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
33. The Parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.
34. The parties consent to service of this Agreement and any final order approving it by e-mail at the following valid e-mail addresses: [copt.britta@epa.gov](mailto:copt.britta@epa.gov) (for Complainant), and [info@yanishcustomexteriors.com](mailto:info@yanishcustomexteriors.com)(for Respondent).

The foregoing Expedited Settlement Agreement In the Matter of Yanish Custom Exteriors, is hereby stipulated, agreed, and approved for entry.

AGENCY

UNITED STATES  
ENVIRONMENTAL PROTECTION

REGION 8,

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Cobb, Supervisor  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance  
Division

Complainant

YANISH CUSTOM EXTERIORS

Respondent

Date: 5-10-2023

By: *Gene Anderson*  
Printed Name: Gene Anderson