

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2016 SEP 26 PM 2:47

IN THE MATTER OF )  
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Ron Scott d/b/a )  
White Dog Painting )  
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Docket No. TSCA-07-2016-0031

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 8 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: Sept. 26, 2016

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

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

2016 SEP 26 PM 2:47

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	
	)	
<b>Ron Scott d/b/a</b>	)	<b>Docket No. TSCA-07-2016-0031</b>
<b>White Dog Painting</b>	)	
<b>111 East 96<sup>th</sup> Street</b>	)	
<b>Kansas City, MO 64114</b>	)	
	)	
<b>Respondent</b>	)	
	)	

**COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Ron Scott, d/b/a White Dog Painting (Respondent) has 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).

**COMPLAINT**

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 Complaint, 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 an individual doing business in the state of Missouri under the name White Dog Painting. Respondent is not incorporated.

### **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 painted surfaces 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.

14. 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.

15. 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**

16. On or about June 24, 2015, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 627 W. 61<sup>st</sup> Terrace, in Kansas City, Missouri (“the Property”), 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 July 27, 2015.

17. Respondent is, and at all times referred to herein was, an individual doing business in the state of Missouri under the name "White Dog Painting." White Dog Painting is not a registered fictitious name.

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

19. At the time of the EPA inspection, and at all times relevant to this Complaint, Respondent was engaged in a "renovation" of the Property as defined by 40 C.F.R. § 745.83. The EPA inspection revealed that Respondent was recently scraping paint from the exterior of the residence and paint chips remained on the ground. The Respondent's employee on-site stated that he had covered the ground with plastic while scraping, but that it extended less than 10 feet from the surfaces being scraped, in order to avoid damaging the plants in front of the house. There were no signs posted clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

20. At all times relevant to this Complaint, Respondent's renovation was a "renovation for compensation" per 40 C.F.R. § 745.82(a).

21. At all times relevant to this Complaint, the Property was "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 was built in 1922.

22. At all times relevant to this Complaint, Consent Agreement, and Final Order, the Property was owned by a party other than Respondent and occupied by adult individuals.

23. 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**

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

#### **Count 1**

25. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

26. Pursuant to 40 C.F.R. § 745.89(a)(1), 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.

27. The EPA inspection revealed that Respondent failed to obtain EPA certification prior to commencing the renovation for compensation on the Property.

28. Respondent's failure to obtain EPA certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

### Count 2

29. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

30. 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.

31. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C.F.R. § 745.85(a)(1).

32. 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 3

33. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

34. 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, 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.

35. The EPA inspection revealed that Respondent failed, 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, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

36. Respondent's failure, 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 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.

**CONSENT AGREEMENT**

37. Respondent and Complainant agree to the terms of this Consent Agreement and Respondent consents to the issuance of the Final Order.
38. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
39. Respondent neither admits nor denies the factual allegations set forth above.
40. Respondent waives his right to contest any issue of fact or law set forth above and his right to appeal the Final Order accompanying this Consent Agreement.
41. 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**

42. Respondent agrees that, in settlement of the claims alleged in this Complaint, Consent Agreement, and Final Order, Respondent shall pay a mitigated civil penalty of One Thousand Two Hundred Forty-Six Dollars (\$1,246.00) as set forth below. This penalty has been adjusted to reflect Respondent's size of business.
43. Respondent shall pay the penalty within sixty (60) days of the effective date of this Complaint, 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:

US 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>.

44. 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

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

45. Respondent understands that his failure to timely pay any portion of the civil penalty 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 \$15.00 will be imposed after thirty days and an additional \$15.00 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.

46. Respondent certifies by the signing of this Complaint, Consent Agreement and Final Order that he has obtained EPA RRP certification for his firm on July 6, 2015, and is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

#### **Effect of Settlement and Reservation of Rights**

47. 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 Complaint, 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.

48. The effect of settlement described in Paragraph 47 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 46 of this Complaint, Consent Agreement and Final Order.

#### **General Provisions**

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

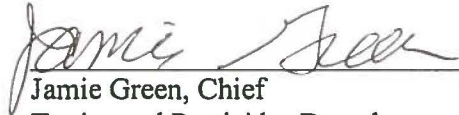
50. This Complaint, Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.



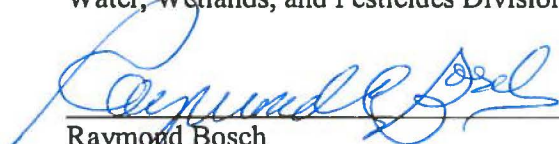


**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 9/26/2016

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

Date: 9/26/2016

  
\_\_\_\_\_  
Raymond Bosch  
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

Sept. 26, 2016  
Date

IN THE MATTER Of Ron Scott d/b/a White Dog Painting, Respondent  
Docket No. TSCA-07-2016-0031

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 emailed to Attorney for Complainant:

[bosch.raymond@epa.gov](mailto:bosch.raymond@epa.gov)

Copy by First Class Mail to Respondent:

Mr. Ron Scott

White Dog Painting

111 E. 96<sup>th</sup> Street

Kansas City, Missouri 64114

Dated: 9/27/16



Kathy Robinson  
Hearing Clerk, Region 7