

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
2016 SEP -7 PM 3:00

IN THE MATTER OF)
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Millennium Restoration and)
Development Corporation)
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_____)

Docket No. TSCA-07-2016-0038

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 14 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: Sept. 7, 2016

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

2016 SEP -7 PM 3: 00

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

BEFORE THE ADMINISTRATOR

In the Matter of

Millennium Restoration and
Development Corporation
2136 S Grand Boulevard
Saint Louis, Missouri 63104

Respondent

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) Docket No. TSCA-07-2016-0038
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CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Millennium Restoration and Development Corporation (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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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, (RRP Rule) promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.
4. The Respondent is a corporation, licensed to do business in the state of Missouri.

Section III

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. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.
6. On June 1, 1998, EPA promulgated information distribution and record keeping requirements codified at 40 C.F.R. Part 745, Subpart E, *Requirements for Hazard Education Before Renovation of Target Housing* (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. § 2686. On April 22, 2008, EPA amended and re-codified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, *Lead-Based Paint Renovation, Repair and Painting Rule* (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686 and 2687. The regulations aimed to protect the public from lead-based paint hazards associated with renovation, repair and painting activities. Under the RRP Rule each person or firm who performs for compensation a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities. Firms and individuals performing

renovation, repair and painting projects for compensation that disturb lead-based paint must use certified renovators who follow specific work practices to prevent lead contamination. Prior to the start of renovation, the firm or individual performing the renovation must provide the owners and occupants of the target housing units subject to regulated renovation, repair, and/or painting a copy of the U.S. Environmental Protection Agency-approved *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet, and maintain written acknowledgment that the pamphlet has been provided.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. EPA promulgated regulations regarding lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. Part 745, Subpart E.

9. The term *target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. 15 U.S.C. § 2681(17).

10. The term *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 by this part (40 C.F.R. § 745.223). The term renovation includes but is not limited to the following: 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. 40 C.F.R. § 745.83.

11. The term *firm* means 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. 40 C.F.R. § 745.83.

12. 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.

13. 40 C.F.R. § 745.89(a)(1) states that firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

14. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

15. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* (EPA Pamphlet).

16. 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 “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. **Occupant Protection.** 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. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. 40 C.F.R. § 745.85(a)(1).

b. **Interior Renovations.** Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material. 40 C.F.R. § 745.85(a)(2)(i)(B). Close windows and doors in the work area. 40 C.F.R. § 745.85(a)(2)(i)(C). Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area. 40 C.F.R. § 745.85(a)(2)(i)(D).

c. **Exterior Renovations.** Close all doors and windows within 20 feet of the renovation or close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation. 40 C.F.R. § 745.85(a)(2)(ii)(A). Ensure that doors within the work area that are used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area. 40 C.F.R.

§ 745.85(a)(2)(ii)(B). 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, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

d. Waste from Renovations. Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. 40 C.F.R. § 745.85(a)(4)(i).

17. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

18. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. 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. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. 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.

Section IV

General Factual Allegations

20. Respondent is, and at all times referred to herein was, a “firm” and a “person” within the meaning of TSCA.

21. On October 20th and 21st, 2015, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the United States Environmental Protection Agency, Region 7 conducted an inspection of the worksite at 1838 Kennett Place, St. Louis, Missouri, St. Louis, Missouri (hereinafter, “the Property”), where Respondent was in the process of conducting “renovations”, as defined by C.F.R. § 745.83, for compensation.

22. The Property was constructed before 1978.

23. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

Section V

Violations

Count 1

24. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

25. At the time of the EPA inspection it was discovered that Respondent failed to provide the owner of the unit with the EPA approved lead hazard information pamphlet, which is a violation of 40 C.F.R. §§ 745.84(a)(1).

26. Respondent’s failure to provide the owner of the unit 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, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

27. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

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

29. 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, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

30. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

31. The EPA inspection revealed that Respondent failed to close and cover all duct openings in the work area with impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

32. Respondent's failure to Respondent's failure to close and cover all duct openings in the work area with impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

33. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

34. The EPA inspection revealed that Respondent failed to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover

doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(C).

35. Respondent's failure to failure to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 5

36. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

37. The EPA inspection revealed that Respondent failed to, cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(D).

38. Respondent's failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 6

39. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

40. The EPA inspection revealed that Respondent failed to close all doors and windows within 20 feet of the renovation or close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation, as required by 40 C.F.R. § 745.85(a)(2)(ii)(A).

41. Respondent's failure to close all doors and windows within 20 feet of the renovation or close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation, is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(A) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent is, therefore, in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 7

42. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

43. The EPA inspection revealed that Respondent failed to ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area, as required by 40 C.F.R. § 745.85(a)(2)(ii)(B).

44. Respondent's failure to ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area, is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(B) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent is, therefore, in violation of Section 409 of TSCA, 15 U.S.C.

§ 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C.

§ 2615.

Count 8

45. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

46. The EPA inspection revealed that Respondent failed 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, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

47. Respondent's failure 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, 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 is, therefore, in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 9

48. The facts stated in Paragraphs 20 through 23 above are herein incorporated.

49. The EPA inspection revealed that Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i).

50. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the 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 is, therefore, in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus

Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section VI

Consent Agreement

51. For purposes of this proceeding, Respondent admits the jurisdictional allegation set forth above.

52. Respondent neither admits nor denies the factual allegations set forth above.

53. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

54. 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.

55. Respondent certifies by the signing of this Consent Agreement and Final Order that it currently has its firm certification pursuant to 40 C.F.R. § 745.89 and is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

56. Respondent consents to the issuance of the Final Order and hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

57. The effect of settlement described in Paragraph 58 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 55 of this Consent Agreement and Final Order.

58. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Zero Dollars (\$0) as set forth in Paragraph 1 of the Final Order. 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 violations is \$47,680. However, pursuant to the statutory requirement that EPA consider a Respondent's ability to pay, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged in this Consent Agreement and Final Order.

Section VII

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of Zero Dollars (\$0).
2. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.
3. This CAFO 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:
MILLENNIUM RESTORATION AND DEVELOPMENT CORPORATION

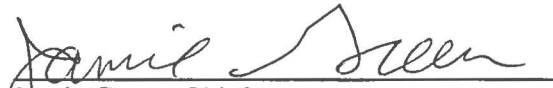
Date: 9/7/2016

By: Claire Vogt

CLAIRE VOGT
Print Name

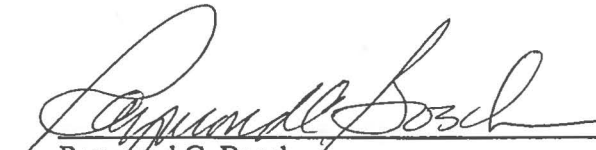
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/8/2016



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

Date: Sept 7, 2016



Raymond C. Bosch
Office of Regional Counsel

IT IS SO ORDERED.

Date: Sept. 7, 2016

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer
U.S. Environmental Protection Agency

IN THE MATTER Of Millennium Restoration and Development Corporation, Respondent
Docket No. TSCA-07-2016-0038

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

Copy by First Class Mail to Respondent:

Claire Vogt

Millennium Restoration and Development Corporation

2136 South Grand Boulevard

Saint Louis, Missouri 63104

Dated: 9/7/16



Kathy Robinson
Hearing Clerk, Region 7