

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2016 SEP 27 PM 1:13

IN THE MATTER OF)

Scott Speakman)

Docket No. TSCA-07-2016-0033

_____)

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. 27, 2016

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

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

BEFORE THE ADMINISTRATOR

In the Matter of

Scott Speakman
Saint Genevieve, Missouri

Respondent

Docket No. TSCA-07-2016-0033

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Scott Speakman (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 Scott Speakman, an individual doing 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. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

10. EPA promulgated regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. These regulations are found within 40 C.F.R. Part 745, Subpart E.

11. 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, per 15 U.S.C. § 2681(17).

12. 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 per 40 C.F.R. § 745.83.

13. 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 per 40 C.F.R. § 745.83.

14. The term *person* means 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 per 40 C.F.R. § 745.83.

15. 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.

16. 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.

17. 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 § 745.90.

18. Pursuant to 40 C.F.R. § 745.84(a)(1), 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 pamphlet; and obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or obtain a certificate of mailing at least 7 days prior to the renovation.

19. Pursuant to § 745.84(a)(2), in addition to the requirements in section § 745.84 (a)(1), if the owner does not occupy the dwelling unit, firms must provide an adult occupant of the unit with the pamphlet; and obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant or obtain a certificate of mailing at least 7 days prior to the renovation.

20. 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) 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 has been completed;
- (b) Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C), firms must close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered 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;
- (c) Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms must, before beginning the renovation, cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater;

- (d) 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.

21. 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).

22. 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

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

24. Respondent is an individual that was performing renovation, repair, and painting work on target housing.

25. On September 2, 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 a work site inspection at 2229 Marconi Avenue in Saint Louis, Missouri. The

inspection indicated that Respondent had conducted “renovations”, as defined by 40 C.F.R. § 745.83, for that location (hereinafter, “the Property”).

26. The Property was constructed before 1978.

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

28. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, Respondent failed to comply with some of the requirements of 40 C.F.R. § 745.

Violations

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

Count 1

30. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

31. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.89(a)(1) and § 745.81(a)(2)(ii) by failing to obtain initial firm certification from EPA.

32. Respondent’s failure to perform the act described above is a violation of 40 C.F.R. § 745.89(a)(1) and § 745.81(a)(2)(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 2

33. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

34. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.84(a)(1) by failing to provide the owner of the unit with the

pamphlet; and obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or obtain a certificate of mailing at least 7 days prior to the renovation.

35. Respondent's failure to perform the act described above 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 3

36. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

37. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.84(a)(2), by failing to provide an adult occupant of the unit with the pamphlet; and obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant or obtain a certificate of mailing at least 7 days prior to the renovation.

38. Respondent's failure to perform the act described above is a violation of 40 C.F.R. § 745.84(a)(2). 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

39. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

40. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.89(d)(2), by failing to ensure that a certified renovator was assigned to each renovation performed by the firm and discharged all of the certified renovator responsibilities identified in § 745.90.

41. Respondent's failure to perform the act described above is a violation of 40 C.F.R. § 745.89(d)(2). 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

42. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

43. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(1), by failing 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; preparing, to the extent practicable, signs in the primary language of the occupants; and/or posting signs before beginning the renovation and makes sure they remain in place and readable until post-renovation cleaning verification have been completed.

44. Respondent's failure to perform the act described above 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 6

45. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

46. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(2)(i)(C), by failing to close windows and doors in the work area; cover doors with plastic sheeting or other impermeable material; and cover doors, used as an entrance to the work area, 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.

47. Respondent's failure to perform the act described above 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 7

48. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

49. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(2)(i)(D), by failing, before beginning the renovation, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

50. Respondent's failure to perform the act described above 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 8

51. The facts stated in Paragraphs 23 through 28 above are herein incorporated.

52. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(4)(i), by failing 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 and/or failure to cover chute if it is used to remove waste from the work area.

53. Respondent's failure to perform the act described above 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, and thus Respondent is subject to civil

penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

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

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

56. 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.

57. 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.

58. Respondent certifies by the signing of this Consent Agreement and Final Order that should Respondent undertake renovations, as defined in 40 C.F.R. Part 745, Subpart E, Respondent will be in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

59. 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.

60. The effect of settlement described in Paragraph 61 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 58 of this Consent Agreement and Final Order.

61. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of \$0.00 as set forth in Paragraph 1 of the Final Order. Payment of this 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. Subpart E alleged in this document. During Pre-filing negotiations, Respondent submitted financial documentation for a

micro-business and ability to pay determinations. 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 \$6,450.00. This penalty has been adjusted to reflect Respondent's size of business. 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. Therefore, Complainant conditionally agrees to resolve the claims alleged in this Consent Agreement and Final Order.

Section VI

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 civil penalty of zero Dollars (\$0.00).
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.

ON THE MATTER OF
[Illegible]

RESPONDENT
SCOTT SPEAKMAN

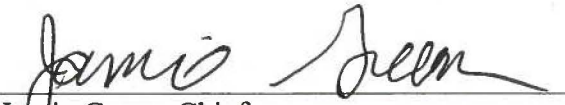
Date 9-22-16

BY Scott Speakman

Scott Speakman
[Illegible]


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/26/2016



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

Date: 9-20-14



Jennifer Trotter
Office of Regional Counsel

IT IS SO ORDERED.

Date: Sept. 27, 2016

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

IN THE MATTER Of Scott Speakman, Respondent
Docket No. TSCA-07-2016-0033

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:

trotter.jennifer@epa.gov

Copy by First Class Mail to Respondent:

Mr. Gene Schmittgens

Attorney at Law

Metropolitan Square

211 N. Broadway, Suite 2500

St. Louis, MO 63102-2727

Dated: 9/27/16



Kathy Robinson
Hearing Clerk, Region 7