

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

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In the Matter of )  
Caleb Bilbruck, ) Docket No. TSCA-07-2016-0034  
Respondent )

**COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Caleb Bilbruck (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 an individual.

## 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* 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. 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. 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. 40 C.F.R. § 745.83.

14. 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.

15. 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.

16. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations must provide the owner of the unit with a EPA approved lead hazard information pamphlet prior to beginning

the renovation.

17. 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. Exterior Renovations. The firm must 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. 40 C.F.R. § 745.85(a)(2)(ii)(C).

c. Waste From Renovations.

(i) 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. If a chute is used to remove waste from the work area, it must be covered. 40 C.F.R. § 745.85(a)(4)(i).

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be 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. 40 C.F.R. § 745.85(a)(4)(ii).

18. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, 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. Respondent is a special trade contractor that performs general handy man renovation work.

22. On May 6, 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 1600 East 14<sup>th</sup> Street, Sedalia, Missouri, 65301 (herein “the Property”), where Respondent was in the process of conducting “renovations”, as defined by C.F.R. § 745.83, for compensation.

23. The Property was constructed before 1978.

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

**Violations**

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

**Count 1**

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

27. At the time of the EPA inspection, it was discovered that Respondent had not obtained EPA certification prior to commencing the renovation for compensation on the Property, which is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

28. Respondent’s failure to perform the act described above is a 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 2**

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

30. At the time of the EPA inspection, it was discovered that Respondent failed to assign a certified renovator to the job, which is a violation of 40 C.F.R. §§ 745.81(a)(3) and 745.89(d)(2).

31. Respondent’s failure to perform the act described above is a 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 3**

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

33. At the time of the EPA inspection, it was discovered that Respondent failed to

provide the property owner with the EPA approved lead hazard information pamphlet prior to beginning the renovation, which is a violation of 40 C.F.R. §§ 745.81(b) and 745.84(a)(1).

34. Respondent's failure to perform the act described above is a 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 4**

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

36. At the time of the EPA inspection, it was discovered that Respondent failed to comply with the following renovation work practice standard – 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; and/or to post signs before beginning the renovation and make sure they remain in place and readable until post-renovation cleaning verification have been completed – in violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(1).

37. Respondent's failure to perform the act described above is a 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 5**

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

39. At the time of the EPA inspection, it was discovered that Respondent failed to comply with the following exterior renovation work practice standard – 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 – in violation of 40 C.F.R. § 745.89(d)(3)



referencing 40 C.F.R. § 745.85(a)(2)(ii)(C).

40. Respondent's failure to perform the act described above is a 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 6**

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

42. At the time of the EPA inspection, it was discovered that Respondent failed to comply with the following waste renovation work practice standard – contain waste from renovation activities in a manner that prevents releases of dust and debris before the waste is removed from the work area for storage or disposal – in violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(4)(i).

43. Respondent's failure to perform the act described above is a 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**

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

45. At the time of the EPA inspection, it was discovered that Respondent failed to comply with the following waste renovation work practice standard – ensure that the 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 at the conclusion of each work day – in violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(4)(ii).

46. Respondent's failure to perform the act described above is a 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 V**

### **Consent Agreement**

47. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

49. 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.

50. 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.

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

52. Respondent has provided financial information to EPA to support the mitigation of the civil penalty and certifies by the signing of this Consent Agreement and Final Order to the truth and accuracy of that information.

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

54. The effect of settlement described in Paragraph 55 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 51 and Paragraph 52 of this Consent Agreement and Final Order.

55. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Zero Dollars (\$0.00) as set forth in Paragraph 1 of

the Final Order. 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. Payment of this mitigated 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.

## **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 mitigated 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.

**RESPONDENT**  
Caleb Bilbruck

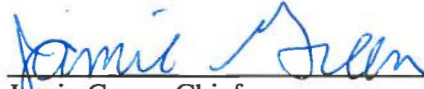
Date: 7/18/16

By: 

Caleb Bilbruck  
Print Name

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

Date: 7/28/2016

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

Date: 7/27/2016

  
\_\_\_\_\_  
Clarissa Howley Mills  
Office of Regional Counsel

**IT IS SO ORDERED.**

Date: Aug. 2, 2016

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

IN THE MATTER Of Caleb Bilbruck, Respondent  
Docket No. TSCA-07-2016-0034

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:

[mills.clarissa@epa.gov](mailto:mills.clarissa@epa.gov)

Copy by First Class Mail to Respondent:

[bilbruckc@yahoo.com](mailto:bilbruckc@yahoo.com)

Dated: 8/3/16



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7