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

In the Matter of:)
) Docket No. TSCA-07-2014-0013
)
Jeffrey Joseph Horton d/b/a)
Square One Home Services)
11910 E 214th Street)
Peculiar, MO 64078,)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Jeffrey Joseph Horton d/b/a Square One Home Services (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, Issuance of Compliance or Corrective Action Orders, and the Renovation, 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 (CAFO) 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 lead-based paint certification, information distribution and renovation requirements of 40 C.F.R. Part 745, Subpart E (Renovation Repair and Painting Rule a/k/a “RRP” Rule), which were authorized for promulgation by Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686.

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 Jeffrey Joseph Horton, doing business as Square One Home Services (“Square One”), a sole proprietorship in good standing under the laws of the state of Missouri. The Respondent meets the definition of a “Firm” and of a “Person”, as those terms are set forth in 40 C.F.R. § 745.83.

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 *Title IV - Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. 15 U.S.C. § 2681(17) defines *target housing* to mean 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.

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

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. EPA has promulgated regulations, pursuant to Section 406 of TSCA, 15 U.S.C. § 2686, 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 (RRP Rule).

10. 40 C.F.R. § 745.83 defines *renovation* to mean 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 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. 40 C.F.R. § 745.89(a)(1) provides that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

12. 40 C.F.R. § 745.89(d)(2) requires that firms performing renovations 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.”

13. 40 C.F.R. § 745.85 sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on *target housing*. Among these are:

(a) 40 C.F.R. § 745.85(a)(1) 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.

(b) 40 C.F.R. § 745.85(a)(2)(ii)(C) Exterior Renovations. Firms 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.

(c) 40 C.F.R. § 745.85(a)(5)(i)(A) Cleaning the Work Area. Firms must collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

14. 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).

15. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 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).

16. 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

17. Respondent is and at all times referred to herein was a “person” and a “firm” within the meaning of 40 C.F.R. § 745.83.

18. On March 7, 2012, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the United States Environmental Protection Agency, Region 7 conducted an inspection of a vacant residence built in 1971 located at 10112 East 83rd Street, Raytown, Missouri, where Respondent was in the process of conducting “renovations”, as defined by C.F.R. § 745.83, for compensation.

19. The building located at 10112 East 83rd Street, Raytown, Missouri, which was the subject of the EPA Inspection, is residential housing built in 1971 and meets the definition of

target housing under 15 U.S.C. § 2681(17).

20. At the time of the EPA Inspection, the Respondent was not a certified firm, as required by 40 C.F.R. § 745.89(a)(1).

21. At the time of the EPA Inspection, the Respondent had not assigned a certified renovator to the job, as required by 40 C.F.R. § 745.89(d)(2).

22. During the EPA Inspection, EPA representatives observed that, in the course of its renovation of the building located at 10112 East 83rd Street, Raytown, Missouri, the Respondent failed to do the following:

(a) 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, as required by 40 C.F.R. § 745.85(a)(1).

(b) Cover the ground with plastic sheeting or other disposal 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 before beginning the renovation, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

(c) Collect paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, as required by 40 C.F.R. § 745.85(a)(5)(i)(A).

23. Prior to beginning the renovation the Respondent did not provide the owner of the building located at 10112 East 83rd Street, Raytown, Missouri, with an EPA Pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

Section V
Violations

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

Count I

24. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, Respondent failed to apply for EPA firm certification prior to commencing the renovation for compensation on this target housing unit, which is a violation of 40 C.F.R. § 745.89(a)(1).

25. Respondent's failure to perform this act indicated above is 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 II

26. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, Respondent failed to assign a certified renovator to the renovation of this target housing unit, which is a violation of 40 C.F.R. § 745.89(d)(2).

27. Respondent's failure to perform this act indicated above is 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 III

28. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, at the time of the EPA Inspection, Respondent failed 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, as required by 40 C.F.R. § 745.85(a)(1).

29. Respondent's failure to perform the acts indicated above are 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 IV

30. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, at the time of the EPA Inspection, Respondent failed to cover the ground with plastic sheeting or other disposal 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 before beginning the renovation, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

31. Respondent's failure to perform the acts indicated above are 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 V

32. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, at the time of the EPA Inspection, Respondent failed to collect paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, as required by 40 C.F.R. § 745.85(a)(5)(i)(A).

33. Respondent's failure to perform the acts indicated above are 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 VI

34. Concerning its renovation performed at 10112 East 83rd Street, Raytown, Missouri, prior to commencing the renovation for compensation which was the subject of the EPA Inspection, Respondent failed to provide the owner of the unit with the EPA Pamphlet, which is a violation of 40 C.F.R. § 745.84(a)(1).

35. Respondent's failure to perform the act indicated in above is 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

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

37. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of this Consent Agreement and Final Order.

38. 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.

39. 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.

40. 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.

41. Respondent consents to the issuance of the Final Order below and consents to the payment of the mitigated civil penalty set forth in the Final Order below, and to any conditions specified in the Consent Agreement.

Section VII
Final Order

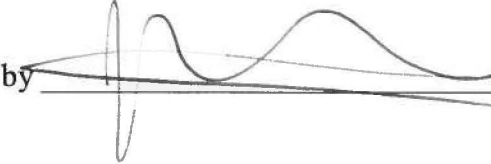
Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

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.

RESPONDENT

**JEFFREY JOSEPH HORTON d/b/a
SQUARE ONE HOME SERVICES**


Date: 3-20-14

by  _____

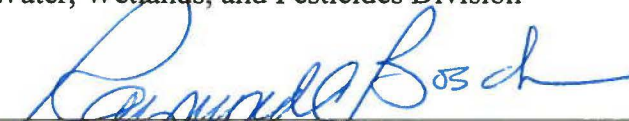
COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/27/2014


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

Date: 3/27/2014

By: 
Raymond C. Bosch
Attorney Advisor
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: 3-31-14



KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Jeffrey Joseph Horton d/b/a Square One Home Services, Respondent
Docket No. TSCA-07-2014-0013

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:

Jeffrey J. Horton
Square One Home Services
11910 E 214th Street
Peculiar, Missouri 64078

Dated: 4/2/14


Kathy Robinson
Hearing Clerk, Region 7