

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2015 DEC 21 AM 8:48

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

BEFORE THE ADMINISTRATOR

In the Matter of

Matthew Andersen
d/b/a Andersen Painting

Respondent

Docket No. TSCA-07-2014-0033

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Respondent has agreed to a settlement of this action, thus this action is 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. A Complaint in this matter was filed on July 21, 2014 and a Motion for Default Order was filed on April 27, 2015.
3. As Respondent and the EPA have now reached agreement to settled this matter,

this Consent Agreement and Final Order serves as additional notice that the 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

4. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

5. The Respondent is Matthew Andersen, d/b/a Andersen Painting, an individual doing business in the state of Nebraska.

Section III

Statutory and Regulatory Background

6. 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.

7. On June 1, 1998, the 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, the 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.

8. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of the 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.

9. The 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.

10. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of the 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.

11. The 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.

12. 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).

13. 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.

14. 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

15. 40 C.F.R. § 745.89(a)(1) states that firms that perform renovations for compensation must apply to the EPA for certification to perform renovations or dust sampling.

16. Pursuant to 40 C.F.R. § 745.89(d)(1), 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.

17. Pursuant to 40 C.F.R. § 745.86(b)(6), certain records must be retained including, but not limited to, documentation of compliance with the work practice requirements, including documentation that a certified renovator was assigned to the project.

18. 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. **Certification.** 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. 40 C.F.R. § 745.89(d)(2).

b. **Information distribution requirements.** Not 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 comply with one of the following: 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. 40 C.F.R. § 745.84(a)(1).

c. **Recordkeeping and Reporting Requirements.** Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of three years following

completion of the renovation. 40 C.F.R. § 745.86.

d. 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 verifications have been completed. 40 C.F.R. § 745.85(a)(1).

e. Containing the work area. Before beginning the renovation, the firm must isolate the work area while the renovation is being performed, including 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).

f. Prohibited and Restricted Practices. The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system. 40 C.F.R. § 745.85(a)(3)(ii).

g. Waste from Renovations. 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).

h. **Cleaning the Work Area.** After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains. 40 C.F.R. § 745.85(a)(5).

19. 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).

20. 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

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

22. Respondent acted as Sub-Contractor and performed exterior regulated RRP renovation activities at 7702 South 30th Street, Bellevue, Nebraska.

23. On May 17, 2012 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

attempted to conduct a records inspection of renovation activities concluded at 7702 South 30th Street, Bellevue, Nebraska (hereinafter, “the Property”), where the Respondent conducted a “renovation”, as defined by C.F.R. § 745.83, for compensation.

24. The Property was constructed before 1978.

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

26. The EPA inspection found, among other things, that Respondent had not obtained initial certification from EPA prior to beginning renovation on target housing; had not assigned a certified renovator to the project; failed to maintain records or make such records available; failed to retain all records necessary to demonstrate compliance for three years; failed to prohibit use of machines to remove lead-based paint without a HEPA vacuum attachment to collect dust and debris at the point of generation; did not clean the work area; did not cover the ground with plastic or impermeable sheeting; did not at the end of each work day contain renovation waste; did not post signs defining the work area and warning others to remain outside the work area.

27. An EPA representative found that minor children were present at the property during the renovation activities.

Violations

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

Count 1

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

30. It was discovered that Respondent failed to obtain initial Firm certification from EPA prior to renovating the property, which is a violation of 40 C.F.R. § 745.89(a).

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

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

32. It was discovered that Respondent failed to assign a certified renovator to perform renovation on the Property, which is a violation of 40 C.F.R. § 745.89(d)(2).

33. 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

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

35. It was discovered that Respondent failed to retain all records necessary to demonstrate compliance with the RRP Rule for three years, which is a violation of 40 C.F.R. § 745.86.

36. 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

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

38. It was discovered that Respondent failed to establish and maintain records, or to make available such records, which is a violation of 40 C.F.R. § 745.87(b).

39. 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

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

41. It was discovered that Respondent failed to post signs defining the work area and warning others not involved in the renovation to remain outside the work area, which is a violation of 40 C.F.R. § 745.85(a)(1).

42. 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

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

44. It was discovered that Respondent failed before beginning of renovation, to cover the ground with plastic sheeting or other impermeable material extending ten feet beyond the perimeter of the renovation, which is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(c).

45. 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

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

47. It was discovered that Respondent failed to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, which is a violation of 40 C.F.R. § 745.85(a)(3)(ii).

48. 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 8

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

50. It was discovered that Respondent failed, at the end of each work day and the conclusion of the renovation, to ensure that waste was collected and stored under containment, in an enclosure or behind a barrier that prevents release and prevents access, which is a violation of 40 C.F.R. § 745.85(a)(4)(ii).

51. 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 9

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

53. It was discovered that Respondent failed to clean the work area until no dust, debris or residue remained after the renovation was complete, which is a violation of 40 C.F.R. § 745.85(a)(5).

54. 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

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

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

57. 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.

58. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

59. 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.

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

61. The effect of settlement described in the Paragraph immediately below is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 59 of this Consent Agreement and Final Order.

62. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of One Thousand Eight Hundred Dollars (\$1,800) 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.

63. Respondent understands that his failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty

as stated in Paragraph 61 above 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 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. §3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

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 One Thousand Eight Hundred Dollars (\$1,800) within thirty (30) days of the effective date of this 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:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. 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

Maria Morey
TOPE/WWPD
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

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
MATTHEW ANDERSEN
D/B/A ANDERSEN PAINTING

Date: Oct 10, 2015 By: 
Matthew Andersen
d/b/a Andersen Painting

0033

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/30/2015 By: Jamie Green
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 11/21/2015 By: Lucretia Myers
Lucretia Myers
Office of Regional Counsel

IT IS SO ORDERED.

Date: 12-17-2015 By: Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency

IN THE MATTER Of Matthew Andersen d/b/a Andersen Painting, Respondent
Docket No. TSCA-07-2014-0033

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:

myers.lucetia@epa.gov

Copy by First Class Mail to Respondent:

Matthew Andersen
d/b/a Andersen Painting
8020 North 31st Street
Omaha, Nebraska 68112

Dated: 12/21/15



Kathy Robinson
Hearing Clerk, Region 7