

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2019 MAR 21 PM 1:56

BEFORE THE ADMINISTRATOR

In the Matter of:

JP Painting, LLC

Respondent

)
)
) Docket No. TSCA-07-2019-0123
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CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and JP Painting, LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

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). Pursuant to Section 16(a)(2)(C), “[t]he Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed [under this subsection].”

2. This Consent Agreement and Final Order (“CAFO”) serves as 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, *Residential Property Renovation*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.

4. Respondent is JP Painting, LLC, a limited liability company doing business in the state of Missouri.

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. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities*, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation. See Lead; Requirements for Hazard Education Before Renovation of Target Housing*, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). *See Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standards for renovations that disturb painted surfaces in target housing and child-occupied facilities and require that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The requirements set forth in the regulations at 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, with exceptions not relevant here.

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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 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. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as 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.

14. The regulation at 40 C.F.R. § 745.82 defines “renovator” as an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

15. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorize a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$39,873 for violations that occur after November 2, 2015.

General Factual Allegations

17. On April 12, 2018, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of EPA conducted an inspection at 1060 West 55th Street in Kansas City, Missouri, to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). Subsequent to that inspection, on May 30, 2018, representatives of EPA reviewed Respondent’s records relating to renovation

activities pursuant to Section 11 of TSCA, 15 U.S.C § 2610 (“records review”). EPA mailed a copy of the inspection report based on the inspection and records review to Respondent on June 28, 2018.

18. Respondent is, and was at all times relevant to this CAFO, a limited liability company doing business in the state of Missouri.

19. Respondent is, and at all times relevant to this CAFO was, a “person” and “firm” as defined by 40 C.F.R. § 745.83.

20. At the time of EPA’s inspection, Respondent was engaged in a “renovation” of the property as defined by 40 C.F.R. § 745.83. The renovation activities included painting, sanding, modification and demolition activities throughout the interior of the property. EPA’s inspection and subsequent investigation revealed that the property was built in 1913.

21. During the records review, EPA identified at least three other properties where Respondent had entered into a contract to perform a “renovation” as defined by 40 C.F.R. § 745.83 on or about the following dates: on May 1, 2017, at 5435 Wyandotte Street, Kansas City, Missouri; on March 15, 2018, at 1305 West 40th Street, Kansas City, Missouri; and on April 2, 2018, at 1012 West 61st Terrace, Kansas City, Missouri. Respondent’s renovation activities at these properties included those associated with painting and remodeling, such as scraping, sanding, power washing, and modification of the interior and exterior of the properties. EPA’s records review and subsequent investigation revealed that the properties were built in 1910, 1908, and 1930, respectively.

22. At all times relevant to this CAFO, Respondent’s renovations of the properties identified in Paragraphs 20 and 21 were “renovations for compensation” per 40 C.F.R. § 745.82(a).

23. At all times relevant to this CAFO, the properties identified in Paragraphs 20 and 21 were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

24. During EPA’s inspection, the property identified in Paragraph 17 was owned by a party other than Respondent and was not occupied.

25. At all times relevant to this CAFO, the properties identified in Paragraph 21 were owned by parties other than Respondent and were occupied during the renovation.

26. As a result of EPA’s inspection, records review, and additional information obtained by the Agency, Complainant has determined that violations of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activities at the properties.

Allegations of Violation

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

Counts 1 through 4

28. The alleged facts stated in Paragraphs 17 through 26 above are herein incorporated.

29. 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, including the work practice standards in 40 C.F.R. § 745.85(a).

30. EPA's inspection and records review revealed that Respondent failed to ensure that a certified renovator was assigned to each renovation and discharged all of the certified renovator responsibilities, including the responsibilities identified in Counts 5 through 7, below, for the renovations identified in Paragraphs 20 and 21.

31. Respondent's failure to ensure that a certified renovator was assigned to each renovation and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

32. The alleged facts stated in Paragraphs 17 through 26 above are herein incorporated.

33. 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 regulation at 40 C.F.R. § 745.85(a)(1) requires firms 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.

34. EPA's inspection revealed that Respondent failed to post protective warning signs as required by 40 C.F.R. § 745.85(a)(1) for the renovation identified in Paragraph 20.

35. 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.

Count 6

36. The alleged facts stated in Paragraphs 17 through 26 above are herein incorporated.

37. 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 regulation at 40 C.F.R. § 745.85(a)(2)(i)(B) requires firms, for interior renovations, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

38. EPA's inspection revealed that Respondent failed to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material for the renovation identified in Paragraph 20.

39. Respondent's failure to close and cover all ducts opening in the work area with taped-down plastic sheeting or other 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.

Count 7

40. The alleged facts stated in Paragraphs 17 through 26 above are herein incorporated.

41. 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 regulation at 40 C.F.R. § 745.85(a)(2)(i)(D) requires firms, for interior renovations, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

42. EPA's inspection revealed that Respondent failed to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area for the renovation identified in Paragraph 20.

43. Respondent's failure to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, 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.

Counts 8 and 9

44. The alleged facts stated in Paragraphs 17 through 26 above are herein incorporated.

45. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation. Under 40 C.F.R. § 745.86(b)(6), the records that firms must retain include documentation of compliance with the requirements of the work practice standards in 40 C.F.R. § 785.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

46. EPA's inspection and records review revealed that Respondent failed to retain and make available to EPA upon request all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, including documentation of compliance with work practice standards for the renovations performed at 1305 West 40th Street, Kansas City, Missouri, and 5435 Wyandotte Street, Kansas City, Missouri, as identified in Paragraph 21.

47. Respondent's failure to retain and, upon request, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, including documentation of compliance with the work practice standards in 40 C.F.R. § 745.85, is a violation of 40 C.F.R. §§ 745.86(a) and 745.86(b)(6). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

48. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

49. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

Penalty Payment

51. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of \$9,791, as set forth below. 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). This penalty has been adjusted to reflect Respondent's size of business.

52. Respondent shall pay the penalty within thirty (30) days of the effective date of the 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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

53. 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

Kasey Barton, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

54. Respondent understands that its failure to timely pay any portion of the civil penalty 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including

processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Conditions

55. Respondent certifies by the signing of this Consent Agreement and Final Order that it completed EPA-accredited renovator training on June 15, 2018 to become a certified renovator and has received EPA firm certification.

56. Respondent and EPA have also agreed, in compromise of the civil penalty that otherwise may be imposed herein, that Respondent shall provide notification to EPA of the next two jobs within two years of the effective date of this Consent Agreement and Final Order for which Respondent undertakes to perform renovation activities on target housing. In fulfilling this obligation, Respondent shall:

- (a) at least five business days prior to commencement of the renovation, submit to EPA the address of the property to be renovated, proposed project dates, and description of planned renovation activities; and
- (b) within five business days of conclusion of the project, submit to EPA a copy of the Sample Renovation Recordkeeping Checklist required to be completed at the end of each project or other documentation demonstrating compliance with the regulations at 40 C.F.R. Part 745, Subpart E.

These notifications shall be submitted to:

U.S. Environmental Protection Agency
Attn: Lead Paint Enforcement
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

57. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

58. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

59. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

60. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

61. Complainant reserves the right to enforce the terms and conditions of this CAFO.

62. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

General Provisions

63. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

64. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

65. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

66. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
JP Painting, LLC

Date: 2/22/19


By:  _____

Fernando Jose Pecina
Print Name

owner
Title

COMPLAINANT
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/28/19



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

Date: 2/28/19



Kasey Barton
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

March 21, 2019
Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kasey Barton
barton.kasey@epa.gov

Copy via Email to Respondent and Attorney for Respondent:

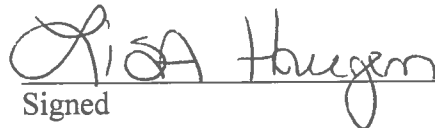
jppaintingkcmo@gmail.com
mitch@burgesslawkc.com

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Mr. Fernando Jose Pecina
JP Painting, LLC
10008 Walnut Drive Apartment 206
Kansas City, Missouri 64114

Dated this 21 day of March, 2019.


Signed _____