

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY REGION 7  
2012 FEB -3 AM 8:15

In the Matter of	)	Docket No. TSCA-07-2012-0012
	)	
Titan Environmental Services	)	CONSENT AGREEMENT
3130 Terrace Street	)	AND
Kansas City, Missouri	)	FINAL ORDER
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Titan Environmental 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).

**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 regulatory requirements of 40 C.F.R. Part 745, Subpart L, Lead-Based

Paint Activities, promulgated pursuant to Title IV (15 U.S.C. 2681-2692) of TSCA

**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 Titan Environmental Services, 3130 Terrace Street, Kansas City, 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. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 402(a)(2) of the law directed EPA to issue regulations regarding the accreditation of training programs including minimum requirements for accreditation of training providers, training curriculum, training hours, hands-on training, trainee competency and proficiency, and requirements for training program quality control. The failure or refusal to comply with the regulations is a violation of Section 409 of TSCA.

**Violations**

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:
  7. Respondent is and at all times referred to herein was a “person” within the meaning of TSCA.
  8. A “training provider” means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

9. On August 24, 2009, Respondent was accredited to offer the Renovator Initial Course – English by EPA.

10. On May 12, 2010, a record keeping inspection was conducted at Respondent's business office.

11. On October 12, 2010, an inspection was conducted of the lead-based paint training course given by Respondent at the Inn at Grand Glaze in Osage Beach, Missouri.

12. On October 28, 2010, a follow-up training record keeping inspection was conducted at Respondent's business office.

#### Pre-Notification

13. Respondent conducted lead-based paint Renovator Initial courses on February 15, February 17, March 24, April 19, April 21, and April 27, 2010.

14. Under the requirements of 40 C.F.R. 745.225(c)(13)(i), EPA must be provided with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered at least seven (7) business days prior to the start date of any course.

15. Respondent failed to provide the required notification at least seven (7) business days prior to the start date of each of the courses listed in Paragraph 12, above.

16. Respondent's failure to perform the acts indicated in paragraph 14 above are violations of 40 C.F.R. § 745.225(c)(13)(i) and 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.

#### Post-Notification

17. Respondent conducted lead-based paint Renovator Initial courses on March 18, 2010, April 19, April 29 and April 30, 2010, May 5, May 6, May 10, May 11, May 12, May 14, May 28, May 29, and May 30, 2010, June 3, June 8, June 21, June 28, June 29 and June 30, July

6, July 9, July 12, July 14, July 15, July 16, July 18, July 23, July 26 and July 29, 2010, August 6, August 7, August 16, August 24, August 26, August 27 and August 31, 2010.

18. Under the requirements of 40 C.F.R. 745.225(c)(14)(i), EPA must be provided with notification after the completion of any lead-based paint activities course no later than ten (10) business days following course completion.

19. Respondent failed to provide the required notification within ten (10) business days after completion of the lead-based paint activities courses listed in Paragraph 17, above.

20. Respondent's failure to perform the acts indicated in paragraph 19, above are violations of 40 C.F.R. § 745.225(c)(14)(i) and 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.

#### Instructor Recordkeeping

21. Respondent conducted a lead-based paint Renovator Initial course on April 22, 2010.

22. Under the requirements of 40 C.F.R. 745.225(i), a training program is required to maintain, and make available to EPA, upon request, all documents specified in 40 C.F.R. 745.225(c)(4) that demonstrate the qualifications listed in 40 C.F.R. 745.225(c)(1) and (2) for the training manager and principal instructors.

23. Respondent failed to maintain and make available upon request the documents required to show the education, work experience, training requirements or demonstrated experience as listed in 40 C.F.R. 745.225(c)(1) and (2) for the principal instructor of the course conducted on April 22, 2010.

24. Respondent's failure to perform the acts indicated in paragraph 23, above are violations of 40 C.F.R. § 745.225(i) and 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.

Hands-On Training

25. Respondent conducted a lead-based paint Renovator Initial courses on April 20, April 21, April 22 and October 12, 2010.

26. Under the requirements of 40 C.F.R. 745.225(c)(6)(vi), a renovator course must last a minimum of eight (8) training hours, with a minimum of two (2) hours devoted to hands-on training activities. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and clean-up methods, and post-renovation cleaning verification.

27. Respondent failed to cover all portions of the hands-on training activities during the training courses listed in Paragraph 25, above.

28. Respondent's failure to perform the acts indicated in paragraph 27, above are violations of 40 C.F.R. § 745.225(c)(6)(vi) and 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.

Student Assessment Recordkeeping

29. Respondent conducted a lead-based paint Renovator Initial courses on April 20 and April 21, 2010.

30. Under the requirements of 40 C.F.R. 745.225(i)(1)(vi), a training program is required to maintain, and make available to EPA, upon request, the results of the student's hands-on skills assessments and course tests and a record of each student's course completion certificate.

31. Respondent failed to maintain and provide the student assessment forms for the training courses listed in Paragraph 29, above.

32. Respondent's failure to perform the acts indicated in paragraph 31, above are violations of 40 C.F.R. § 745.225(i)(1)(vi) and 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.

Consent Agreement

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

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

35. 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.

36. 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.

37. 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 L.

38. 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.

39. 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 L alleged in this document.

40. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order 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.

41. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP) within three hundred and thirty (330) days from the date this agreement is finalized, which the parties agree is intended to secure significant environmental and/or public health benefit. Respondent will fund lead abatement activities at residential properties where lead is present. Total cost of the SEP will be at least \$97,902.00. Abatement work may consist of, but is not limited to, the replacement of windows, doors or other structural components, abatement of lead-based paint by permanent enclosure or encapsulation, remediation of lead-contaminated soil and costs associated with the displacement of occupants during the abatement projects. Prior to beginning SEP activities on any residential property, Respondent will provide a work plan proposal for approval by EPA. The work plan proposal will detail the activities to be undertaken at each property. Work plans for all projects associated with this SEP will be submitted to EPA within ninety (90) days from the date this Consent Agreement is signed by the Regional Judicial Officer.. The work plan proposal shall be directed to the following:

Maria Morey  
WWPD/TOPE  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

Upon approval from EPA, Respondent shall proceed with the SEP project. Respondent will provide to EPA a copy of Lead Abatement Project Notification including the occupant protection

plan required by the State of Missouri to be submitted 10 business days prior to the commencement of a project.

42. Respondent agrees that the abatement work on all SEPs referenced in Paragraph 41 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities.

43. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks.;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

As to EPA:

Maria Morey  
WWPD/TOPE  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.



As to the state:

Missouri:  
Chris Silva  
Missouri Department of Health and Senior Services  
930 Wildwood  
Jefferson City, MO 65109

44. If the SEP referenced in Paragraph 41 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 100% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

- (i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.
- (ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within 180 days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 41 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.
- (iii) Any stipulated penalties for which Respondent is liable under this

agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

45. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

46. Defendant/Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Defendant/Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

47. Respondent agrees to offer at no additional cost the hands-on training portion of the Renovator Initial course to all students identified in the courses conducted in Paragraph 25, above, within sixty (60) days of the date this Consent Agreement is finalized. A copy of the proposed notification will be submitted to EPA at the address in Paragraph 41, above, for approval prior to being sent to the students. A report detailing receipt of notification must be

provided within thirty (30) days of the sending of the notification.

48. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

49. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: AThis project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency.@

**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 Ten Thousand Eight Hundred and Seventy-eight Dollars (\$10,878.00) within thirty (30) days of the effective date of this Final Order. The payment shall be identified as **In the Matter of Titan Environmental Services.** 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:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 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  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kent Johnson, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

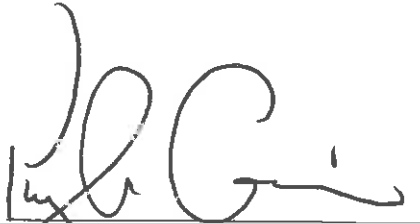
4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT**

**Titan Environmental Services**

Date: 1/20/12

By:

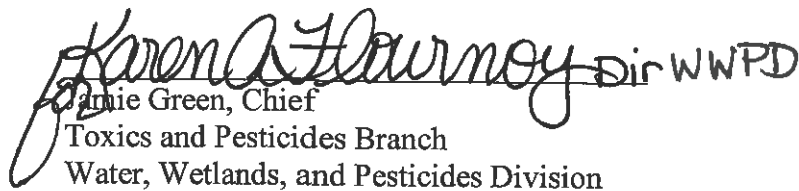


Kyle Gunion  
Print Name

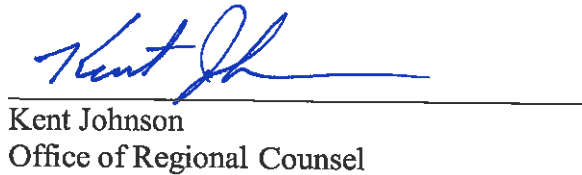
Operations Manager  
Title

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

Date: 1/20/12

  
Karen A. Flormoy, Chief  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division

Date: 1/20/12

  
Kent Johnson  
Office of Regional Counsel

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

Date: Feb. 2, 2012 

ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Titan Environmental Services, Respondent  
Docket No. TSCA-07-2012-0012

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 hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Klye Gunion, Operations Manager  
Titan Environmental Services  
3130 Terrace Street  
Kansas City, Missouri 64111

Dated: 2/3/12



Kathy Robinson  
Hearing Clerk, Region 7