



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 06 2014

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

U.S. Environmental
Protection Agency-Reg 2
2014 OCT -8 AM 7:43
REGIONAL HEARING
CLERK

Michael J. Muller, Esq.
Muller, Mannix & Hobbs, PLLC
P.O. Box 143
Glens Falls, New York 12801-0143

Re: In the Matter of Raymond Demers, Docket No. TSCA-02-2014-9278

Dear Mr. Muller,

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of the date on which the Regional Judicial Officer signed the enclosed Consent Agreement and Final Order. Please arrange for payment of this penalty according to the schedule and instructions given in the Order.

Sincerely yours,

Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

bcc: William Sawyer (2ORC)
Stuart Keith (2ORC)
Vickie Pane (2PTSB)
Meghan Tierney (2PTSB)
John J. Martin (2PAD)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
:
In the Matter of :
:
Raymond Demers, :
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2014-9278

U.S. Environmental
Protection Agency-Reg 2
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. Section 22.13(b) that where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Section 22.18(b)(2) and (3).

On September 18, 2013, the United States Environmental Protection Agency, Region 2 ("EPA"), issued a letter entitled "Opportunity to Show Cause to EPA for Potential Violations of the Toxic Substances Control Act" ("SCL") to Raymond Demers ("Respondent"). The SCL alleged that Respondent violated the regulations promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and codified at 40 C.F.R. Part 745, Subpart E, relating to EPA's lead-based

paint ("LBP") Renovation, Repair and Painting ("RRP") Rule.

EPA and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT

1. Respondent is Raymond Demers, an individual.
2. Respondent's primary place of business is located at P.O. Box 41, Argyle, New York 12809.
3. On or about December 5, 2012, a duly designated representative of the EPA conducted an inspection of Respondent's renovation activities at a two apartment rental home located at 233 Broadway in Fort Edward, New York 12828.
4. The inspection referenced in paragraph "3" above, is hereinafter referred to as "the Inspection".
5. As a result of the Inspection, EPA determined that Respondent, operating as a firm performing renovations during 2012, had failed to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with 40 C.F.R. §745.89(a); (2) before beginning the renovation, to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area to contain the dust in accordance with 40 C.F.R. §745.85(a)(2)(i)(D); and (3) ensure that a renovator was assigned to the renovation in accordance with 40 C.F.R. §745.89(d)(2), pursuant to 40 C.F.R. §745.81(a)(3).
6. On November 19, 2013, the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent, operating as a firm that engages in renovations which may involve lead-based paint, is subject to the regulations and requirements pertaining to LBP promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E.

2. Respondent's failures during 2012 to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with 40 C.F.R. §745.89(a); (2); before beginning the renovation, to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area to contain the dust in accordance with 40 C.F.R. §745.85(a)(2)(i)(D); and (3) ensure that a renovator was assigned to the renovation in accordance with 40 C.F.R. §745.89(d)(2), pursuant to 40 C.F.R. §745.81(a)(3), are violations under Section 409 of TSCA, 15 U.S.C. § 2689.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of 40 C.F.R. Part 745, Subpart E.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations described in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual determinations contained in the

“Findings of Fact” section, above; and (c) neither admits nor denies the determinations set forth in the “Conclusions of Law” section, above.

3. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent’s ability to pay a larger civil penalty. This analysis was based upon information submitted to Complainant by the Respondent, including federal and state tax returns for 2010-2012. By such representative’s signature to this Consent Agreement, Respondent certifies that the information submitted to EPA regarding Respondent’s ability to pay is accurate and not misleading.

4. Respondent shall pay, by cashier’s or certified check, a civil penalty in the amount of **EIGHT HUNDRED DOLLARS (\$800.00)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

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

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street,
New York, NY 10045**
- 3) Account: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”
- 6) Raymond Demers
- 7) Docket Number TSCA-02-2014-9278

Payment must be received at the above address (or account of EPA) shall be owing and due on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (hereinafter referred to as the “due date”). Promptly after payment has been made, Respondent shall send copies of the payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

And

Meghan Tierney, Lead Team
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-225
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if any payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

5 This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and the accuracy of Respondent’s certification in paragraph “3” above) the civil and administrative claims described

in Paragraph "5" of the "Findings of Fact" and paragraph "2" of the "Conclusions of Law" set forth above. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the determinations contained in the "Findings of Fact" section and the "Conclusions of Law" section, above. Respondent further waives its right otherwise to contest all such determinations.

8. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

9. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

10. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and

conditions set forth in this Consent Agreement.

11. Each party shall bear its own costs and fees in this matter.

12. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

Raymond Demers

RESPONDENT:

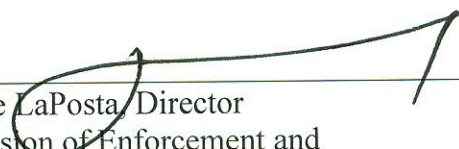
BY: 

NAME: Raymond Demers
(PLEASE PRINT)

TITLE: N/A

DATE: 9-24-14

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

DATE: SEPTEMBER 24, 2014

In the Matter of Raymond Demers
Docket Number TSCA-02-2014-9278

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Raymond Demers, bearing Docket Number TSCA-02-2014-9278. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a).

DATE: September 29, 2014

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Raymond Demers
Docket Number TSCA-02-2014-9278

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Michael J. Muller, Esq.
Muller, Mannix & Hobbs, PLLC
P.O. Box 143
Glens Falls, New York 12801-0143

Dated: 10/6/14
New York, New York

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