

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. TSCA-08-2023-0003

IN THE MATTER OF:)
)
Bordner Home Improvement Company)
dba Bordner Home Solutions, Inc.)
2 N. Nevada Avenue, Suite 1140)
Colorado Springs, Colorado 80903)
)
Respondent.)

CONSENT AGREEMENT

Complainant, the authorized representative of the United States Environmental Protection Agency, and Respondent, Bordner Home Improvement Company doing business as Bordner Home Solutions, Inc., (collectively the Parties), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Consent Agreement is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. "Target housing" means any housing constructed prior to 1978, except for 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). 15 U.S.C. § 2681(17)

6. “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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. EPA may assess a civil penalty of up to \$43,611 for each violation of TSCA section 409. 15 U.S.C. § 2615, 40 C.F.R. part 19; 87 Fed. Reg. 1678 (Jan. 12, 2022).

III. RESPONDENT

8. Respondent is a corporation doing business in the State of Colorado.
9. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a “firm” as defined by 40 C.F.R. § 745.83.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. On September 7, 2021, the EPA sent Respondent a letter requesting information related to Respondent’s compliance with the RRP Rule.
12. Based on information provided to the EPA, during the period of February 2021 through September 2021, Respondent engaged in work at the following jobsites:
 - a. 3010 Avondale Dr, Colorado Springs, CO 80917;
 - b. 905 Magnolia Street, Colorado Springs, CO 80907;
 - c. 206 N Gerard Avenue, Boone, CO 81025;
 - d. 316 Lincoln Street, Pueblo, CO 81004;
 - e. 2918 Imperial Avenue, Pueblo, CO 81005;
 - f. 8951 Grand Avenue, Beulah, CO 81023;
 - g. 7421 Windsor Boulevard, Cheyenne WY 82009;
 - h. 5349 Flying S Lane, Colorado Springs, CO 80915;
 - i. 5015 McCue Drive, Cheyenne, WY 82007; and
 - j. 11050 Emerson Street, Denver, CO 80233.
13. All jobsites are residential properties constructed prior to 1978 and are “target housing” as the term is defined in 15 U.S.C. § 2681(17).
14. Respondent performed a “renovation,” as the term is defined in 40 C.F.R. § 745.83, at each of the above listed jobsites.

Counts 1 through 30

15. Firms performing renovations on target housing are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.86.
16. For all jobsites listed in paragraph 12, Respondent failed to retain or produce the following records to demonstrate compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.86(b)(6):
 - a. Documentation that a certified renovator was assigned,
 - b. Documentation that the certified renovator performed or directed workers to perform the work practice standards described in 40 C.F.R. § 745.85(a), and
 - c. Documentation that the certified renovator performed the post-cleaning verification described in 40 C.F.R. § 745.85(b).
17. Respondent's failure to maintain each type of documentation described above in paragraph 16 constitutes thirty (30) separate violations of 40 C.F.R. § 745.86 and sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

Counts 31 and 32

18. The RRP Rule requires that firms performing renovations provide occupants of target housing with the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" (Renovate Right pamphlet) no more than 60 days before beginning renovation activities, pursuant to 40 C.F.R. § 745.84.
19. Firms are required to obtain written acknowledgement that the occupant has received the Renovate Right pamphlet or obtain a certificate of mailing at least seven (7) days prior to the renovation pursuant to 40 C.F.R. § 745.84(a)(2).
20. Respondent failed to obtain, from the occupants of two jobsites: (1) the jobsite at 206 N Gerard Avenue, Boone, CO 81025, and (2) the jobsite at 316 Lincoln Street, Pueblo, CO 81004, a written acknowledgment that the occupant received the Renovate Right pamphlet or a certificate of mailing at least seven (7) days prior to the renovation, in violation of 40 C.F.R. § 745.84(a)(2).
21. Respondent's failure to obtain written acknowledgment or a certificate of mailing of the Renovate Right pamphlet constitutes two (2) separate violations of section 409 of TSCA, 15 U.S.C. § 2689.

V. SETTLEMENT

22. The Parties agree that settlement of this matter is in the public interest, and the Parties agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most

appropriate means of resolving this matter.

23. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
24. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
25. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of twenty-four thousand nine hundred twenty dollars (\$24,920) is appropriate to settle this matter.
26. Respondent agrees to:
 - a. pay a civil penalty in the amount of twenty-four thousand nine hundred twenty dollars (\$24,920), in six (6) monthly installments, as follows:
 - i. The first payment is due on the first day of the month following the month in which the final order approving this Agreement is filed with the Regional Hearing Clerk (unless the final order is filed during the last week of the month in which case the first payment is due by the fifth day of the following month).
 - ii. Thereafter, each monthly payment is due on the first day of the month.
 - iii. Interest shall be assessed at the U.S. Treasury's Current Value of Funds Rate. Including interest, all six (6) installments shall be in the amount of \$4,161.99.
 - b. If at any time Respondent makes an early payment or payment in addition to the monthly installment above, Respondent may request revised installment amounts from the EPA after making such a payment.
 - c. In the event Respondent fails to make any payment of a civil penalty when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest, penalties, or handling charges then unpaid immediately due and payable.
 - d. If the due date for payment falls on a weekend or federal holiday, then the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.

- e. Payment of the civil penalty shall be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>.
- f. If the payment is made by check, the full penalty amount may be paid by sending a cashier's check or certified check (payable to the "Treasurer, United States of America") to the following address:

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

- g. The payment must reference the docket number that appears on the Final Order, either on the check or as directed when prompted for a document number via an electronic payment method.

27. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent electronically to:

Kristin Jendrek
TSCA Enforcement Coordinator
jendrek.kristin@epa.gov

and

Katherine Tribbett
Regional Hearing Clerk
tribbett.katherine@epa.gov

28. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
29. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs

EPA sponsors or funds, 40 C.F.R. § 13.17.

30. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

VI. GENERAL PROVISIONS

31. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.
32. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the Parties, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
33. This Consent Agreement, upon incorporation into a final order and full satisfaction by both Parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
34. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
35. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
 - a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
 - b. Claims based on criminal liability; and,
 - c. Claims based on any other violations of the Act or federal or state law.
36. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
37. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

38. Each party to this action shall bear its own costs and attorney fees, if any.
39. The Parties agree that this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement and any signature page may be transmitted electronically (e.g., a PDF file).
40. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
41. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which the Final Order is filed approving this Consent Agreement.
42. The parties consent to service of the Final Order approving this Consent Agreement by e-mail at the following valid e-mail addresses: eakins.shaula@epa.gov (for Complainant), and jerry@bordnerhome.com (for Respondent).

The foregoing Consent Agreement In the Matter of Bordner Home Improvement Company dba Bordner Home Solutions, Inc. is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Date: _____

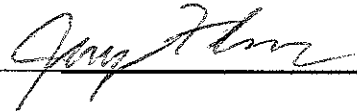
By: _____
David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

Complainant.

**Bordner Home Improvement Company dba
Bordner Home Solutions, Inc.,**

Respondent.

Date: 4-20-23

By: 

Printed Name: Jerry Fleener

Title: President