

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. TSCA-08-2024-0003

FILED

Jun 17, 2024

4:39 pm

U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:

Ole Boli, LLC
d/b/a CertaPro Painters of Southern
Montana |
2020 Charlotte Street, Ste 10
Bozeman, Montana 59718

Respondent.

CONSENT AGREEMENT

Complainant, the authorized representative of the United States Environmental Protection Agency, and Respondent, Ole Boli, LLC d/b/a CertaPro Painters of Southern Montana (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) and 42 U.S.C. § 4851b.

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 \$48,512 for each violation of TSCA section 409. 15 U.S.C. § 2615, 40 C.F.R. part 19; 88 Fed. Reg. 89312 (Dec. 23, 2023).

III. RESPONDENT

8. Respondent is a company that is authorized to do business in the State of Montana.
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 June 26, 2023, the EPA sent Respondent a letter requesting information related to Respondent’s compliance with the RRP Rule for 10 jobsites that Respondent performed on pre-1978 homes.

Based on information provided to the EPA in response to the information request, Respondent engaged in work on 10 jobsites (Jobsites) located at:

- a. 810 Callendar Street, Livingston, MT
 - b. 19 Hill Street, Bozeman, MT
 - c. 609 South 3rd Avenue, Bozeman, MT
 - d. 2225 Black Otter Road, Unit 43, Big Sky, MT
 - e. 16 West Front Street, Three Forks, MT
 - f. 510 W. Dickerson, Bozeman, MT
 - g. 506 West Babcock, Bozeman, MT
 - h. 311 South Wilson, Bozeman, MT
 - i. 508 E. Lamme St., Bozeman, MT (exterior)
 - j. 508 E. Lamme St., Bozeman, MT (interior)
12. The Jobsites were all residential properties constructed prior to 1978 and are “target housing” as the term is defined in 15 U.S.C. § 2681(17).
 13. Respondent performed a “renovation,” as the term is defined in 40 C.F.R. § 745.83, by

performing surface preparation activities prior to painting.

Firm Certification

14. Firms that perform or offer to perform renovations on target housing are required to apply to the EPA for initial certification. 40 C.F.R. § 745.89(a).
15. Respondent failed to obtain initial certification from the EPA prior to performing the renovations on target housing described above, as required by 40 C.F.R. § 745.89(a).
16. Respondent's failure to obtain initial certification constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

Record Retention Requirements

17. 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.
18. Respondent failed to retain or produce, upon request by EPA, all records necessary to demonstrate compliance with the RRP Rule, in violation of 40 C.F.R. § 745.86.
19. Respondent's failure to retain or produce the required records constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

Obtain Written Acknowledgment of Renovate Right Pamphlet

20. 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.
21. 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).
22. Respondent failed to obtain, from the occupant of the Jobsites, 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).
23. Respondent's failure to obtain written acknowledgment or a certificate of mailing of the Renovate Right pamphlet constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

V. SETTLEMENT

24. 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.

25. 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.
26. 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.
27. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of twenty-thousand, five-hundred dollars (\$20,500) is appropriate to settle this matter.
28. Respondent consents and agrees to pay a civil penalty in the amount of twenty-thousand, five-hundred dollars (\$20,500) in the manner described below.
 - a. Payment of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer.
 - b. 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.
 - c. Payment of the civil penalty shall be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>.
 - d. 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 979078
St. Louis, Missouri 63197-9000
 - e. 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.

29. 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:

Britta Copt,
TSCA Enforcement Officer,
copt.britta@epa.gov

and

Kate Tribbett,
Regional Hearing Clerk,
tribbett.kate@epa.gov

30. 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.
31. 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.
32. 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

33. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
34. 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.

35. 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.
36. 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.
37. 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.
38. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
39. 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.
40. Each party to this action shall bear its own costs and attorney fees, if any.
41. 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).
42. 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.
43. 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.

44. The parties consent to service of the Final Order approving this Consent Agreement by e-mail at the following valid e-mail addresses: weiner.marc@epa.gov (for Complainant), and judd@bkbh.com and bbergeson@certapro.com (for Respondent).

The foregoing Consent Agreement, In the Matter of Ole Boli, LLC d/b/a CertaPro Painters of Southern Montana, is hereby stipulated, agreed, and approved for entry.

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

Complainant

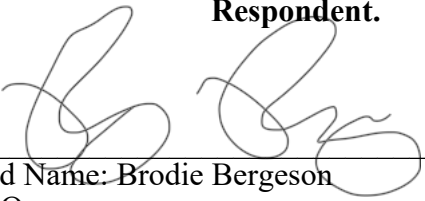
Date: _____

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

**OLE BOLI, LLC d/b/a CERTAPRO PAINTERS
OF SOUTHERN MONTANA**

Respondent.

Date: 6-14-24

By: 
Printed Name: Brodie Bergeson
Title: Owner