

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
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Chillemi Construction Corp., :
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Respondent. :
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Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
:
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CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2017-9172

2017 SEP 09 11 08 20

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), 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 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 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 pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this Consent

Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Chillemi Construction Corp. (“Chillemi” or “Respondent”).
2. Respondent’s primary place of business is located at 513 Willow Avenue, Hoboken, NJ 07030.
3. Respondent is engaged in the business of renovation and painting.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745, Subpart E, referred to as the “Renovation, Repair, and Painting (RRP) Rule.”
6. On or about April 4, 2016, the United States Environmental Protection Agency, Region 2 (“EPA”), received a tip/complaint from a tenant with a young child residing in an apartment located at 219 Garden Street, Hoboken, New Jersey 07030 (the “Property”), where Respondent was conducting renovations. The Property, constructed in 1901, is target housing, as that term is defined by TSCA § 401(17), 15 U.S.C. § 2681(17).
7. Based on information received from the tenant, EPA initiated a desktop investigation of the Respondent’s compliance with the work practice standards of the RRP Rule while conducting renovations at the Property.
8. On April 21, 2016, EPA sent an “Information Request Letter” (“IRL”) to Respondent as part of EPA’s investigation.

9. On May 27, 2016, a “Failure to Respond to Information Request Letter” was sent to the Respondent.

10. On or about June 27, 2016, Respondent submitted its response to EPA’s IRL.

11. Based on the information collected and reviewed, including documents provided by the tenant, photos, lead test results from a third-party certified lead-based paint inspection firm, telephone conversations and emails between EPA and Respondent or his attorney, and Respondent’s response to the IRL, EPA determined that the renovation work performed by Respondent at the Property from approximately April 2016 through May 2016 was subject to the requirements of the RRP Rule and that Respondent had violated the regulations as set forth below.

12. EPA determined that Respondent failed to:

- a. obtain initial certification from EPA, as required by 40 CFR § 745.81(a)(2)(ii);
- b. obtain, from the owner, a written acknowledgement that the owner has received the EPA-approved lead hazard information pamphlet as required by 40 CFR § 745.84(a)(1)(i);
- c. obtain, from the adult occupant, a written acknowledgement that the adult occupant has received the EPA-approved lead hazard information pamphlet as required by 40 CFR § 745.84(a)(2)(i); and
- d. retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities as required by 40 CFR § 745.86.

13. Starting on or about May 3, 2017, the parties communicated through a series of informal telephonic and email conversations to discuss EPA’s findings with regard to

Respondent's failures to comply with TSCA and the RRP Rule during the renovation at the Property.

14. As a result of such discussions, the parties agreed to enter into this Consent Agreement.

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. 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 "Findings of Fact and Conclusions of Law" section, above; and (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

2. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

3. Respondent certifies that it is currently in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745, Subpart E.

4. Respondent further certifies that the financial information and documentation it submitted to EPA on September 1, 2017, is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person