

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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|-------------------------------|---|---|
| In the Matter of: |) | Docket No. TSCA-05-2024-0001 |
| |) | |
| Indy Enterprises, Inc. |) | |
| (dba Indy Painting) |) | Proceeding to Assess a Civil |
| Mound, Minnesota, |) | Penalty Under Section 16(a) of the |
| |) | Toxic Substances Control Act, |
| Respondent. |) | 15 U.S.C. § 2615(a) |
| _____ |) | |

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Indy Enterprises, Inc. (dba Indy Painting), a corporation organized under the laws of the State of Minnesota, with a place of business located at 4980 Brighton Boulevard, Mound, Hennepin County, Minnesota 55364.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided in 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

13. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

14. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 745.87.

15. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

16. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. *73 Fed. Reg.* 21691 (April 22, 2008).

17. The regulation at 40 C.F.R. § 745.82(a) provides that 40 C.F.R. Part 745, Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant to this CAFO.

18. The regulation at 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

19. The regulation at 40 C.F.R. § 745.83 defines *renovation* to mean 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 by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (*e.g.*, walls, ceiling, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

20. The regulation at 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

21. The regulation at 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

22. The regulation at 40 C.F.R. § 745.85(a)(2)(ii)(D) requires that, if the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. This regulation further specifies that vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

23. The regulation at 40 C.F.R. § 745.85(a)(5) requires that, after the renovation has been completed, the firm performing the exterior renovation must clean the work area until no dust, debris or residue remains.

24. The regulation at 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

25. The regulation at 40 C.F.R. § 745.86(b)(6) provides that the records which must be retained under 40 C.F.R. § 745.86(a) shall include documentation of compliance with the requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

26. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

27. The Administrator of EPA may assess a civil penalty of up to \$43,611 for each violation of Section 15 or Section 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

General Allegations

28. At all times relevant to this Complaint, Respondent was a corporation with a place of business located at 4980 Brighton Boulevard, Mound, Hennepin County, Minnesota, and was therefore a *firm* as defined by 40 C.F.R. § 745.83.

29. Respondent's owner, president and registered agent was Kory Lidstrom, whose email address was "kory@indypainting.net."

30. On or about October 11, 2022, EPA sent an information request letter (IRL) via email to Respondent, using the email address "kory@indypainting.net," regarding Respondent's

compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

31. On or about October 14, 2022, Respondent replied to the IRL via email and provided certain records. According to the information and records provided by Respondent, Indy Enterprises, Inc., doing business as “Indy Painting,” performed or directed its employees to perform painting and other work at each of the properties identified in the table below:

Table 1 – Renovation Work Performed at Target Housing

| Housing Address | Year Built | Contracted Work | Contract Date |
|---|------------|-------------------|-------------------|
| 4921 Upton Ave. S., Minneapolis, MN | 1922 | Exterior painting | May 15, 2020 |
| 5241 2 nd Ave. S., Minneapolis, MN | 1932 | Exterior painting | August 3, 2020 |
| 5920 Oliver Ave. S., Minneapolis, MN | 1950 | Exterior painting | October 5, 2020 |
| 257 Sidney St. W., St., Paul, MN | 1921 | Exterior painting | April 19, 2021 |
| 2520 Colfax Ave. S., Minneapolis, MN | 1910 | Exterior painting | November 29, 2021 |

32. The exterior painting that Respondent performed at each of the properties listed in paragraph 31, above, were modifications of each building’s existing structure that resulted in disturbance of painted surfaces, and therefore were *renovations* as defined in 40 C.F.R. § 745.83.

33. In its October 11, 2022, IRL, EPA also requested all records concerning the renovations that Respondent had performed from October 1, 2020 to October 1, 2022. Respondent provided contracts for the renovations identified in paragraph 31, above, and certain training records, but did not provide all of the records necessary to demonstrate compliance with the work practice standards in 40 C.F.R. § 745.85.

34. Each of the buildings listed in Table 1 in paragraph 31, above, is residential housing built prior to 1978, and therefore is *target housing* as defined in 40 C.F.R. § 745.103.

35. Respondent either performed or directed workers to perform each of the renovations described in paragraph 31, above, and is therefore a *renovator* as defined in 40 C.F.R. § 745.83.

COUNT 1

(40 C.F.R. § 745.85(a)(2)(ii)(D): Failure to Take Extra Precautions to Prevent Contamination of Adjacent Properties)

36. Paragraphs 1 through 35, above, are incorporated by reference as if set forth in full.

37. The regulation at 40 C.F.R. § 745.85(a)(2)(ii)(D) requires that, if a renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties.

38. Between May 20 and June 6, 2022, Respondent performed renovation activities at the target housing property located at 2520 Colfax Avenue S., Minneapolis, MN.

39. Prior to beginning or during the renovation of the target housing property located at 2520 Colfax Avenue S., Minneapolis, MN, Respondent failed to erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation did not contaminate adjacent buildings or migrate to adjacent properties.

40. Respondent's failure to erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation did not contaminate adjacent buildings or migrate to adjacent properties constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(D) and Section 409 of TSCA, 15 U.S.C. § 2689.

41. Respondent's violation of 40 C.F.R. § 745.85(a)(2)(ii)(D) and Section 409 of TSCA, 15 U.S.C. § 2689, subjects Respondent to the assessment of administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 2

(40 C.F.R. § 745.85(a)(5): Failure to Clean Work Area)

42. Paragraphs 1 through 35, above, are incorporated by reference as if set forth in full.

43. The regulation at 40 C.F.R. § 745.85(a)(5) requires that firms engaged in exterior renovations must clean the work area until no dust, debris or residue remains after the renovation has been completed.

44. Between May 20 and June 6, 2022, Respondent performed exterior renovation activities at the target housing property located at 2520 Colfax Avenue S., Minneapolis, MN.

45. Respondent failed to clean the work area until no dust, debris or residue remained after the renovation has been completed.

46. Respondent's failure to clean the work area until no dust, debris or residue remained after the renovation of the target housing property located at 2520 Colfax Avenue S., Minneapolis, MN had been completed constitutes a violation of 40 C.F.R. § 745.85(a)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

47. Respondent's violation of 40 C.F.R. § 745.85(a)(5) and Section 409 of TSCA, 15 U.S.C. § 2689, subjects Respondent to the assessment of administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNTS 3 - 7

(40 C.F.R. § 745.86(a): Failure to Retain Records)

48. Paragraphs 1 through 35, above, are incorporated by reference as if set forth in full.

49. For each of the renovation projects described in paragraph 31, and Table 1, above, Respondent failed to retain and make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for a period of three (3) years following

completion of the renovations, in violation of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

50. For the renovation at 2520 Colfax Avenue S., Minneapolis, MN, the records provided by Respondent did not include the following:

- a. Documentation that on-the-job training was performed for the individuals who performed the renovation at this property;
- b. Documentation that a certified renovator used Lead Safe Work Practices during the renovation at this property;
- c. Documentation that post-cleaning verification was performed following the renovation at this property.

51. For each of the other four properties listed in Paragraph 31, Table 1, above, the records provided by Respondent did not include the following:

- a. Documentation that a certified renovator was assigned to each project;
- b. Documentation that on-the-job training was performed for each project;
- c. Documentation that a certified renovator used Lead Safe Work Practices during each renovation project;
- d. Documentation that post-cleaning verification was performed after the renovation project.

52. Respondent's failure to retain and make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for each of the five renovations identified in paragraph 31, and Table 1, above, constitutes five violations of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

53. Each of Respondent's five violations of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689, subjects Respondent to the assessment of administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Civil Penalty

54. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is **Twenty-Five Thousand One-Hundred Seventy-Seven Dollars (\$25,177)**. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,177 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

The check must state Indy Enterprises, Inc., and the docket number of this CAFO.

Alternatively, Respondent can pay the \$25,177 penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Indy Enterprises, Inc., and the docket number of this CAFO.

56. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
R5hearingclerk@epa.gov

Craig Meredith (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
meredith.craig@epa.gov
and
R5lecab@epa.gov

James J. Cha (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
cha.james@epa.gov

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO: Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

60. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cha.james@epa.gov (for Complainant), and kory@indypainting.net (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

61. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

62. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

63. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

64. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

65. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).


66. The terms of this CAFO bind Respondent, and its successors and assigns.

67. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

68. Each party agrees to bear its own costs and attorneys' fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

Consent Agreement and Final Order
In the Matter of: Indy Enterprises, Inc. (dba Indy Painting), Respondent
Docket No.: TSCA-05-2024-0001



Kory Lidstrom
Owner and President
Indy Enterprises, Inc.
(dba Indy Painting)

10-25-23

Date

**Consent Agreement and Final Order
In the Matter of: Indy Enterprises, Inc. (dba Indy Painting), Respondent
Docket No.: TSCA-05-2024-0001**

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5