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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 Elm Street, Suite 500  
Dallas, Texas 75270

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Evander's Construction, LLC,

Respondent.

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Docket No. TSCA-06-2022-6154

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**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Evander's Construction, LLC ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E.

**Parties**

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Evander's Construction, LLC a corporation incorporated in the state of Texas and conducting business in the state of Texas.

**Statutory and Regulatory Background**

5. TSCA was amended with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 to 4856, with the addition of Title IV – Lead Exposure Reduction, Section 401 to 412 of TSCA, 15 U.S.C. §§ 2681 to 2692. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U.S.C. § 4851.

6. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. § 2682, 2686, and 2687, the EPA promulgated the Lead, Renovation, Repair and Painting (RRP) Rule at 40 C.F.R. Part 745, Subpart E - Residential Property Renovation, to ensure that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin; and individuals and firms performing renovations are certified and following work practice standards during the renovations. 40 C.F.R. § 745.80.

7. The requirements set forth in the regulations at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, apply to all renovations performed for compensation in target

housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R.

§ 745.82.

8. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart E.

9. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorize a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$43,611 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022.

#### **Definitions**

10. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

11. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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 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, ceilings, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping); and interim controls that disturb painted surfaces.

12. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except 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).

13. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

**EPA Findings of Fact and Conclusions of Law**

14. Respondent is, and at all times referred to herein was, a “person” as defined by 40 C.F.R. § 745.83.

15. Respondent is, and at all times referred to herein was, a “firm” as defined by 40 C.F.R. § 745.83.

16. On January 27, 2021, the EPA, Region 6 requested information related to Respondent’s compliance with the requirements of TSCA and the RRP Rule, and EPA subsequently received and reviewed information produced by Respondent.

17. During the time-period for which information was requested as described in paragraph 16, Respondent engaged in “renovations” as defined by 40 C.F.R. § 745.83.

18. During the time-period for which information was requested as described in paragraph 16, Respondent performed “renovations... for compensation” per 40 C.F.R. § 745.82(a) at three (3) properties (the “Properties”) that were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

19. On December 7<sup>th</sup>, 2021, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On December 16<sup>th</sup>, 2021, the EPA conferred with Respondent, articulated the EPA’s position concerning Respondent’s compliance with TSCA, and provided Respondent with an opportunity to rebut or supplement the information forming the basis of EPA’s position.

20. As a result of the EPA investigation and additional information obtained by the EPA, Complainant has determined that violations of the RRP Rule and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activities at the Properties.

**EPA Findings of Violation**

21. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

22. Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder as follows:

*Count 1*

23. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities. Pursuant to 40 C.F.R. § 745.89(b)(1)(iii), a firm must be re-certified by EPA every 5 years and must not perform renovations if the firm fails to obtain recertification before the firm’s current

certification expires.

24. Respondent had not applied to the EPA nor obtained certification pursuant to 40 C.F.R. § 745.89 from the EPA prior to performing the renovation at the Properties.

25. Respondent's firm certification expired on April 29, 2015. During the time that Respondent's firm certification was expired, Respondent continued to perform renovations on target housing.

26. Respondent's failure to obtain firm re-certification when continuing to perform renovations after the initial firm certification expired is a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

*Counts 2 - 4*

27. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

28. Respondent failed to assign a certified renovator to each of the three (3) renovations performed by the firm at the three (3) Properties.

29. Respondent's failures to assign a certified renovator to each of the renovations at the Properties are violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

*Counts 5-7*

30. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation.

31. Pursuant to 40 C.F.R. § 745.86(b)(6), one of the records that must be retained for

inspection is 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 all 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 40 C.F.R. § 745.85(b).

32. Respondent failed to prepare and retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 as required by 40 C.F.R. §§ 745.86(a) and 745.86(b)(6) for each of the three (3) renovations performed at the three (3) Properties.

33. Respondent's failures to prepare and retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 for each of the three (3) renovations performed at the three (3) Properties are violations of 40 C.F.R. § 745.86(a) and 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

#### **CONSENT AGREEMENT**

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to any conditions specified herein;
- e. waives any right to contest the allegations set forth herein; and
- f. waives its rights to appeal the Final Order accompanying this Consent Agreement.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

**Penalty Payment**

37. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of five thousand dollars (\$5,000.00), an amount reflecting the nature, circumstances, extent, and gravity of the alleged violations; Respondent's ability to pay; the effect on Respondent's ability to continue to do business; Respondent's history of prior such violations; degree of culpability; and such other matters as justice may require.

38. Respondent shall pay the penalty within thirty (30) days of receiving notice of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

39. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to the following:

Lorena S. Vaughn  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ORC)  
Dallas, Texas 75270-2102  
[vaughn.lorena@epa.gov](mailto:vaughn.lorena@epa.gov); and



Stan Lancaster  
Enforcement and Compliance Assurance Division  
Toxics Enforcement Section  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDST)  
Dallas, Texas 75270-2101  
Lancaster.Stan@epa.gov

40. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

**Effect of Settlement and Reservation of Rights**

41. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

42. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

43. Respondent certifies by the signing of this Consent Agreement that it is presently

in compliance with all requirements of TSCA and its implementing regulations.

44. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

45. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

46. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

47. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

48. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

49. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent

with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

50. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *Taylor.Nathan@EPA.gov*

To Respondent: *evandersconstruction@hotmail.com*

**RESPONDENT**  
**Evander's Construction, LLC**

Date: 9/23/2022

By: Evander Curley  
Signature

Evander Curley  
Print Name

Owner/ President  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Margaret Osbourne

Digitally signed by MARGARET  
OSBOURNE  
Date: 2022.10.03 12:49:40 -05'00'

Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Taylor.Nathan@epa.gov

Copy via Email to Respondent:

evandersconstruction@hotmail.com

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Signed  
Office of Regional Counsel  
U.S. EPA, Region 6