

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with, among other things, any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities, including certification of individuals and firms for renovations and work practice standards for renovations. These rules are codified at 40 C.F.R. Part 745, subpart E, Residential Property Renovation.

3.2. 40 C.F.R. Part 745, Subpart E applies to all renovations performed for compensation in target housing.

3.3. "Target housing" is defined under Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and at 40 C.F.R. § 745.103 to mean "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities... ."

3.4. "Person" is defined at 40 C.F.R. § 745.83 to mean "any natural or judicial person including any individual, corporation, partnership, or association... ."

3.5. "Firm" is defined at 40 C.F.R. § 745.83 to mean "a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity... ."

3.6. "Renovation" is defined at 40 C.F.R. § 745.83 to mean "the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces..." and includes "scraping."

3.7. "Renovator" is defined at 40 C.F.R. § 745.83 as "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."

3.8. Respondent is a corporation organized in the State of Alaska.

3.9. Respondent is therefore a "firm" within the meaning of 40 C.F.R. § 745.83.

3.10. The Respondent pulled four Alaska permits to perform work for compensation in and around Anchorage, Alaska for properties built pre-1978 (Stonke Construction's renovation).

3.11. The Respondent pulled permits prior to becoming RRP firm and renovator certified. Renovation work included reroofing, residing, removing interior walls, and replacing old floors with new floors.

3.12. Therefore, Respondent performed a "renovation" on "target housing," as these terms are as defined at 40 C.F.R. § 745.83.

COUNT I

3.13. 40 C.F.R. § 745.81(a)(2)(ii) requires that no firm may perform, offer or claim to perform renovations in target housing, without certification from EPA under 40 C.F.R. § 745.89(a).

3.14. Respondent did not obtain certification from EPA prior to conducting the Stonke Construction renovation.

3.15. Respondent's failure to first obtain certification from EPA before performing the Stonke Construction renovation is a violation of 40 C.F.R. § 745.81(a)(2)(ii).

COUNT II

3.16. Under 40 C.F.R. § 745.89(d)(1) each firm performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

3.17. The individuals performing renovation activities at the Stonke Construction renovation was not certified and had not been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

3.18. Respondent's failure to ensure all individuals performing renovation activities on behalf of Respondent are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, is a violation of 40 C.F.R. § 745.89(d)(1).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, 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 matters as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$840 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Luna.Teresa@epa.gov

Kim M. Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Farnham.Kim@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

04/06/2016

FOR RESPONDENT:

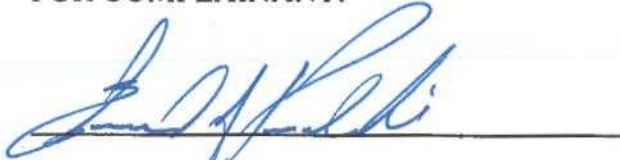


Kris Stonke, Owner
Stonke Construction

DATED:

4/21/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 26th day of April, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Stonke Construction, Docket No.: TSCA-10-2016-0079** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Kim M. Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kris Stonke
Stonke Construction
4122 O'Malley Road
Anchorage, Alaska 99507

DATED this 26 day of April, 2016.



TERESA LUNA
Regional Hearing Clerk
EPA Region 10