



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2014 APR 22 AM 11:13

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: TSCA-08-2014-0004

IN THE MATTER OF:

VANGUARD CONSTRUCTION
COMPANIES LTD.

800 W. 8th Avenue, Suite #107
Denver, CO 80204

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22nd DAY OF April, 2014.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)
)
Vanguard Construction Companies LTD)
800 W. 8th Avenue, Ste. #107)
Denver, CO 80204,)
)
Respondent.)
)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

DOCKET NO. : TSCA-08-2014-0004

Complainant, the United States Environmental Protection Agency (EPA), Region 8, and Respondent, Vanguard Construction Companies LTD, (Respondent) (together, the Parties) by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY MATTERS

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act (Residential Lead Hazard Act), 42 U.S.C. § 4851 et seq., and the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.
2. EPA regulations authorized by the statutes are set out in part 745, subpart E of title 40 of the Code of Federal Regulations (C.F.R.) and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA, 15 U.S.C. § 2615.
3. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (Rules of Practice), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Agreement), intended to simultaneously commence and conclude this matter is authorized by the Rules of Practice, 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.
4. The Respondent is a "firm" and a "renovator" as the terms are defined in 40 C.F.R. § 745.83.
5. The Respondent conducted a "renovation" as the term is defined in 40 C.F.R. § 745.83 by removing painted surfaces at 2762 South Logan Street, Englewood, Colorado, (Jobsite) for compensation.
6. The Jobsite is a residential housing property constructed prior to 1978 and is "target housing" as the term is defined in 40 C.F.R. § 745.103.

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7. On January 14, 2014, an authorized representative of the EPA conducted a compliance inspection at the Jobsite to determine compliance with the Renovation, Repair, and Painting (RRP) Rule. 15 U.S.C. § 2682, 40 C.F.R. part 745 subpart E.
8. Firms performing renovations on target housing must apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a).
9. The EPA found that Respondent failed to obtain the required initial certification from the EPA prior to performing a renovation on housing constructed prior to 1978. This is a violation of the RRP Rule, specifically, 40 C.F.R. § 745.81(a)(2)(ii).
10. Respondent's failure to comply with 40 C.F.R. § 745.81 is a violation of TSCA section 402, 15 U.S.C. § 2682.
11. Firms performing renovations on target housing must retain all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation activities as required by 40 C.F.R. § 745.86(a).
12. The EPA found that Respondent was unable to provide records documenting compliance with the work practice standard for containment of the work area pursuant to 40 C.F.R. § 745.85(a)(2).
13. The EPA found that Respondent was unable to provide records documenting compliance with the work practice standard of warning signs being posted pursuant to 40 C.F.R. § 745.85(a)(1).
14. Respondent's failure to comply with the record keeping requirements at 40 C.F.R. § 745.86(a) is a violation of TSCA section 402, 15 U.S.C. § 2682.

II. TERMS OF SETTLEMENT

15. To determine the amount of the civil penalty to be assessed, the EPA considered, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of TSCA, or lack thereof, and degree of culpability.
16. In consideration of the facts and circumstances of this matter, the Parties agree to enter into this Agreement in order to settle the violation for the penalty amount of **\$1,000 (one thousand dollars)**. Payment shall be made in two installments of **\$500 (five hundred dollars)** per installment every 30 calendar days in accordance with the attached document (Attachment A) entitled *Instructions for Making a Payment*.
17. In signing this Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements (40 C.F.R. § 745 subpart E) at the time the work described herein was being

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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 Agreement.

18. Upon the effective date of the Agreement, full payment of the civil penalty shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.
19. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
20. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing, including but not limited to the right to contest the allegations contained herein, and to appeal this Agreement.
21. Each party shall bear its own costs and attorney fees, if any.
22. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Agreement and to bind the Respondent to the terms and conditions of this Agreement.
23. The Parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

III. GENERAL PROVISIONS

24. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or 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 agreement. This Agreement contains all terms of the settlement agreed to by the Parties.
25. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
26. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.
27. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,**

Complainant

Date: 4/21/14

By: 
David Cobb, Acting Supervisor
Toxics Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-AT)
U.S. Environmental Protection Agency,
Region 8

Date: 4/21/14

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-L)
U.S. Environmental Protection Agency,
Region 8

Vanguard Construction Companies LTD

Respondent

Date: 4/11/14

By: 

Printed Name: James Bateman

Title: President

INSTRUCTIONS FOR MAKING A PAYMENT

Payment in the amount of **\$1,000 (one thousand dollars)** shall be paid in two installments of **\$500 (five hundred dollars)** per installment, and the first installment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day. The second installment of **\$500 (five hundred dollars)** is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed on day 61 from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 60 days of the due date (that is, on day 91 after the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

Each payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

REGULAR MAIL:

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

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency "

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FEDERAL EXPRESS, AIRBORNE, OR OTHER COMMERCIAL CARRIER:

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

ACH TRANSACTIONS (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields.)

A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Tina Artemis
Regional Hearing Clerk
Mail Code 8RC
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Alexas Gilbert
RRP Enforcement Coordinator
Mail Code 8ENF-AT
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/ CONSENT AGREEMENT and FINAL ORDER** in the matter of **VANGUARD CONSTRUCTION COMPANIES LTD.; DOCKET NO.: TSCA-08-2014-0004** was filed with the Regional Hearing Clerk on April 22, 2014.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt on April 22, 2014 to:

James Bateman
800 W. 8th Avenue, Suite #107
Denver, CO 80204

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 22, 2014



Tina Artemis
Paralegal/Regional Hearing Clerk

