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U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:)
) Docket No. TSCA-07-2014-0006
)
Z & B HOLDINGS, LLC)
d/b/a Berry Door & Window)
714 Goddard Avenue)
Chesterfield, MO 63005)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Z & B HOLDINGS, LLC d/b/a Berry Door and Window, LLC (hereinafter Respondent) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I
Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted 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 (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the lead-based paint certification, renovation, information distribution and record keeping requirements of 40 C.F.R. §§ 745.80-92 (Renovation Repair and Painting Rule a/k/a “RRP” Rule), which were authorized for promulgation by *Title IV - Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

Section II
Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Z & B HOLDINGS, LLC, a corporation in good standing under the laws of the state of Missouri, doing business in the state of Missouri as Berry Door & Window. The Respondent meets the definition of a “Firm” and of a “Person”, as those terms are set forth in 40 C.F.R. § 745.83.

Section III
Statutory and Regulatory Background

Statutes

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding *Title IV - Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. 15 U.S.C. § 2681(17) 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.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), requires that the Administrator of EPA promulgate regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

9. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the Administrator of EPA promulgate regulations with recordkeeping and reporting requirements necessary to insure the effective implementation of TSCA Title IV, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

10. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail or refuse to comply with the provisions of TSCA Title IV, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692, or any rule or order issued thereunder.

11. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA, 42 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

Regulations

12. EPA has promulgated regulations regarding lead-based paint activities, including the renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. §§ 745.80-92, and were promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682.

13. 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, 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.

14. EPA has promulgated regulations requiring persons who perform renovations for compensation at target housing to provide an approved lead hazard information pamphlet to the owner and occupant of such housing no more than 60 days prior to commencing the renovation. These regulations are found within 40 C.F.R. § 745.84, and were promulgated pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b).

15. EPA has promulgated regulations requiring each person who performs for compensation a renovation of target housing to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity. These

regulations are found within 40 C.F.R. Part 745.86, and were promulgated pursuant to Section 407 of TSCA, 15 U.S.C. § 2687.

16. 40 C.F.R. § 745.86(b)(6) requires firms performing renovations to retain documentation of compliance with the requirements of § 745.85 [Work Practice Standards], “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 § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).”

17. 40 C.F.R. § 745.85 sets forth the regulations for Work Practice Standards that must be followed by firms performing renovations on *target housing*. Among these are:

(a) 40 C.F.R. § 745.85(a)(1) Occupant Protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

(b) 40 C.F.R. § 745.85(a)(2)(i)(B) Interior Renovations. Firms must close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(c) 40 C.F.R. § 745.85(a)(2)(i)(D) Interior Renovations. Firms must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable

material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(d) 40 C.F.R. § 745.85(a)(4)(i) Waste From Renovations. Firms must ensure that waste from renovation activities is contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(e) 40 C.F.R. § 745.85(a)(2)(ii)(B) Exterior Renovations. Firms must ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(f) 40 C.F.R. § 745.85(a)(2)(ii)(C) Exterior Renovations. Firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property lien prevents 10 feet of such ground covering.

18. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. §

3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

Section IV
General Factual Allegations

20. Respondent is and at all times referred to herein was a “person” and a “firm” within the meaning of 40 C.F.R. § 745.83.

21. Respondent is a “renovator” who performed “renovations” as defined by 40 C.F.R. § 745.83 for compensation.

22. On or about February 8, 2011, Respondent signed a contract to perform renovations on the property located at 7121 Maryland Avenue, University City, Missouri. This property was constructed before 1978.

23. On or about May 14, 2011, Respondent signed a contract to perform renovations on the property located at 417 Hampshire Court, Webster Groves, Missouri. This property was constructed before 1978.

24. On or about October 7, 2011, Respondent signed a contract to perform renovations on the property located at 403 Bach, Kirkwood, Missouri. This property was constructed before 1978.

25. On or about October 7, 2011, Respondent signed a contract to perform renovations on the property located at 328 Newport Avenue, Webster Groves, Missouri. This property was constructed before 1978.

26. On or about February 2, 2011, Respondent signed a contract to perform renovations on the property located at 825 Brookside Drive, Glendale, Missouri. This property was constructed before 1978.

27. On or about October 1, 2011, Respondent signed a contract to perform renovations on the property located at 7562 Amherst Avenue, St. Louis, Missouri. This property was constructed before 1978.

28. On or about February 9, 2011, Respondent signed a contract to perform renovations on the property located at 7122 Willow Tree Lane, University City, Missouri. This property was constructed before 1978.

29. On or about August 9, 2011, Respondent signed a contract to perform renovations on the property located at 7423 Devonshire, St. Louis, Missouri. This property was constructed before 1978.

Section V

Violations

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

Count 1

30. Respondent failed to provide the owners and/or occupants of the property located at 7121 Maryland Avenue, University City, Missouri, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property, in violation of 40 C.F.R. § 745.84(a).

31. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

32. Concerning the renovation performed at 7121 Maryland Avenue, University City,

Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85 which is a violation of 40 C.F.R. § 745.86.

33. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

34. Concerning its renovation performed at 417 Hampshire Court, Webster Groves, Missouri, Respondent failed to assign a certified renovator, which is a violation of 40 C.F.R. § 745.89(d)(1).

35. Respondent's failure to perform the acts indicated above are in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

36. Concerning its renovation performed at 417 Hampshire Court, Webster Groves, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85 which is a violation of 40 C.F.R. § 745.86.

37. Respondent's failure to perform the acts indicated above are in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 5

38. Concerning its renovation performed at 403 Bach, Kirkwood, Missouri, the Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

39. Respondent's failure to perform the acts indicated above are in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 6

40. Concerning its renovation performed at 328 Newport Avenue, Webster Groves, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

41. Respondent's failure to perform the acts indicated in above is in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 7

42. Concerning its renovation performed at 825 Brookside Drive, Glendale, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

43. Respondent's failure to perform the acts indicated in above is in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 8

44. Concerning its renovation performed at 7562 Amherst Avenue, St. Louis, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

45. Respondent's failure to perform the acts indicated in above is in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under

Section 16 of TSCA, 15 U.S.C. § 2615.

Count 9

46. Concerning its renovation performed at 7122 Willow Tree Lane, University City, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

47. Respondent's failure to perform the acts indicated in above is in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 10

48. Concerning its renovation performed at 7122 Willow Tree Lane, University City, Missouri, Respondent failed to provide the owners and/or occupants of the property with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property, in violation of 40 C.F.R. § 745.84(a).

49. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 11

50. Concerning its renovation performed at 7423 Devonshire, St. Louis, Missouri, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

51. Respondent's failure to perform the acts indicated in above is in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under

Section 16 of TSCA, 15 U.S.C. § 2615.

Count 12

52. Concerning its renovation performed at 7423 Devonshire, St. Louis, Missouri, Respondent failed to assign a certified renovator, which is a violation of 40 C.F.R. § 745.89(d)(1).

53. Respondent's failure to perform the acts indicated above are in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section VI
Consent Agreement

54. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

55. Respondent neither admits nor denies the factual allegations set forth above.

56. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

57. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

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

59. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745. Respondent agrees

that the effect of this settlement is conditioned upon the accuracy of this representation of Respondent to EPA.

60. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty and payment of any stipulated penalties as specified in the Final Order.

61. Payment of the mitigated civil penalty, as set forth in the Final Order shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. Part 745 alleged in this document.

62. Respondent understands that his failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of the penalty described in this Consent Agreement and Final Order 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VII
Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Twenty-Three Thousand Two Hundred Dollars (\$23,200), plus interest, as set out in Exhibit 1 to this Order. The payment shall be made at the address below. The 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, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

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"

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
Z & B HOLDINGS, LLC.,
d/b/a Berry Door & Window, LLC


Date: 3/18/14

by 

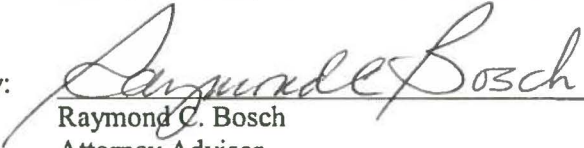
Member
TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/31/2014

By: 
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 3-31-2014

By: 
Raymond C. Bosch
Attorney Advisor
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: April 3, 2014

Karina Borromeo

KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Exhibit 1

Z&B Holdings, LLC (d/b/a Berry Door & Windows, LLC)

Rate Period : Quarterly

Nominal Annual Rate : 1.000 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Penalty Amount	05/01/2014	23,212.00	1		
2 Penalty Payment	05/01/2014	3,892.86	6	Quarterly	08/01/2015

AMORTIZATION SCHEDULE - U.S. Rule (no compounding), 360 Day Year

	Date	Penalty Amount	Penalty Payment	Interest	Principal	Balance
TOTAL PENALTY		23,212.00				23,212.00
Penalty Payment	05/01/2014		3,892.86	0.00	3,892.86	19,319.14
Penalty Payment	08/01/2014		3,892.86	48.30	3,844.56	15,474.58
Penalty Payment	11/01/2014		3,892.86	38.69	3,854.17	11,620.41
2014 Totals			11,678.58	86.99	11,591.59	
Penalty Payment	02/01/2015		3,892.86	29.05	3,863.81	7,756.60
Penalty Payment	05/01/2015		3,892.86	19.39	3,873.47	3,883.13
Penalty Payment	08/01/2015		3,892.86	9.73	3,883.13	0.00
2015 Totals			11,678.58	58.17	11,620.41	
Grand Totals		23,212.00	23,357.16	145.16	23,212.00	

IN THE MATTER OF Z & B Holdings, LLC d/b/a Berry Door & Window, Respondent
Docket No. TSCA-07-2014-0006

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy emailed to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Matt Zehner, Member
Z & B Holdings, LLC
d/b/a Berry Door & Window
714 Goddard Avenue
Chesterfield, Missouri 63005

Dated: 4/ _____


Kathy Robinson
Hearing Clerk, Region 7