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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA - REGION 10

In the Matter of:

RONALD EDWIN DYER

Portland, Oregon

Respondent.

)
) **DOCKET NO. TSCA-10-2014-0164**
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)
) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)

I. AUTHORITIES

1.1 This civil administrative complaint (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Complainant”) by the Toxic Substances Control Act (“TSCA” or “Act”), 15 U.S.C. § 2601 *et seq.* The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who has redelegateed this authority to the Director of the Office of Air, Waste and Toxics in Region 10.

1.2 Pursuant to Section 16(a) of the Act, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), Complainant hereby seeks the assessment of a civil administrative penalty against Ronald Edwin Dyer (“Respondent”) for violations of Section 409 of TSCA, 15 U.S.C. § 2689.

II. STATUTORY AND REGULATORY BACKGROUND

2.1 Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides in pertinent part that any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty for each such violation.

2.2 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.

2.3 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 renovation. These rules are codified at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation (“RRP Rule”).

2.4 The RRP Rule applies to all renovations performed for compensation in target housing and child-occupied facilities.

2.5 In accordance with 40 C.F.R. § 745.83, the definitions in 40 C.F.R. § 745.103 apply to the RRP Rule.

2.6 “Target housing” is defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103 to mean “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.”

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

2.8 “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”

2.9 “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 The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components”

2.10 “Renovator” is defined at 40 C.F.R. § 745.83 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.”

2.11 “Residential dwelling” is defined at Section 401(14)(A) of TSCA, 15 U.S.C. § 2681(14)(A), to mean “a single-family dwelling, including attached structures such as porches and stoops.”

2.12 “Pamphlet” is defined at 40 C.F.R. § 745.83 to mean “the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any state or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose.”

III. ALLEGATIONS

3.1 Respondent is a “person” as defined at 40 C.F.R. § 745.83.

3.2 Respondent is a “firm” as defined at 40 C.F.R. § 745.83.

3.3 The residence located at 2624 NE 19th Avenue, Portland, Oregon (“Residence”) is a single family dwelling and is therefore a “residential dwelling” as defined at Section 401(14)(A) of TSCA, 15 U.S.C. § 2681(14)(A).

3.4 The Residence was constructed prior to 1978 and is therefore “target housing” as defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

3.5 On or around April 21, 2011, Respondent performed work for compensation at the Residence (“Portland Renovation”).

3.6 Work at the Portland Renovation included the removal and modification of the interior and exterior painted surfaces and painted components of the Residence. Therefore, the Portland Renovation is a “renovation” as defined at 40 C.F.R. § 745.83.

3.7 Respondent is therefore a “renovator” as defined at 40 C.F.R. § 745.83.

COUNT 1

3.8 Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), “on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under [40 C.F.R.] § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one for the exceptions identified in [40 C.F.R.] § 745.82(a) or (c).”

3.9 The Portland Renovation does not qualify for the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

3.10 Respondent did not obtain certification from EPA under 40 C.F.R. § 745.89 prior to performing the Portland Renovation.

3.11 Respondent's failure to obtain certification from EPA under 40 C.F.R. § 745.89 prior to performing the Portland Renovation is a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 2

3.12 Pursuant to 40 C.F.R. § 745.84(a)(2), "no more than 60 days before beginning renovation activities in any residential dwelling units of target housing, the firm performing the renovation must . . . if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet"

3.13 The owner of the Residence did not occupy the Residence on or around April 21, 2011.

3.14 There was an adult occupant of the Residence on or around April 21, 2011.

3.15 Respondent failed to provide the adult occupant of the Residence with the pamphlet prior to performing the Portland Renovation.

3.16 Respondent's failure to provide the adult occupant of the Residence with the pamphlet prior to the Portland Renovation is a violation of 40 C.F.R. § 745.84(a)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 3

3.17 Pursuant to 40 C.F.R. §§ 745.84(a)(2)(i) and (ii), "no more than 60 days before beginning renovation activities in any residential dwelling units of target housing, the firm performing the renovation must . . . comply with one of the following: (i) [o]btain, from the adult

occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant [or] (ii) [o]btain a certificate of mailing at least 7 days prior to the renovation.”

3.18 Respondent failed to obtain, from the adult occupant of the Residence, a written acknowledgement that the occupant received the pamphlet.

3.19 Respondent failed to certify in writing that a pamphlet was delivered to the dwelling in the Residence and that Respondent had been unsuccessful in obtaining a written acknowledgement from an adult occupant of the Residence.

3.20 Respondent failed to obtain a certificate of mailing at least 7 days prior to the Portland Renovation.

3.21 Respondent’s failure to obtain, from the adult occupant of the Residence, a written acknowledgement that the occupant received the pamphlet, certify in writing that a pamphlet was delivered to the dwelling in the Residence and that Respondent had been unsuccessful in obtaining a written acknowledgement from an adult occupant, or obtain a certificate of mailing at least 7 days prior to the Portland Renovation is a violation of 40 C.F.R. §§ 745.84(a)(2)(i) and (ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 4

3.22 Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms performing renovations in target housing “must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.”

3.23 During the Portland Renovation, Respondent failed to cover the floor surface in the Residence, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust.

3.24 Respondent's failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 5

3.25 Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), firms performing exterior renovations "must cover the ground with plastic sheeting or other disposable impermeable materials 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 line prevents 10 feet of such ground covering."

3.26 During the Portland Renovation, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable materials extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris.

3.27 Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable materials extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 6

3.28 Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(D), firms performing exterior renovations must, “in certain situations take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.”

3.29 The Portland Renovation was conducted in very close proximity to the adjacent property.

3.30 During the Portland Renovation, Respondent failed to take extra precautions in containing the work area to ensure that dust and debris from the renovation did not contaminate other buildings of other areas of the property or migrate to adjacent properties.

3.31 Respondent’s failure to take extra precautions in containing the work area to ensure that dust and debris from the renovation did not contaminate other buildings or other areas of the property or migrate to adjacent properties is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(D) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT 7

3.32 Pursuant to 40 C.F.R. § 745.89(d)(1), “firms 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.”

3.33 Respondent failed to ensure that all individuals performing the Portland Renovation were either certified renovators or were trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

3.34 Respondent's failure to ensure that all individuals performing the Portland Renovation were either certified renovators or were 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) and Section 409 of TSCA, 15 U.S.C. § 2689.

IV. PENALTY

4.1 Based upon the facts alleged in this Complaint and pursuant to the authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant proposes that a civil penalty not to exceed \$30,420 be assessed against Respondent.

4.2 Based on an evaluation of the facts alleged in this Complaint, and after considering the statutory factors of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), of nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, ability to pay, prior history of violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, Complainant proposes that an administrative penalty not to exceed \$30,420 be assessed against Respondent, as follows:

Count 1 - Conducting a renovation without certification from EPA:	\$ 4,500
Count 2 – Failure to provide an adult occupant of the unit (if not the owner) with the EPA-approved Pamphlet:	\$ 2,840
Count 3 - Failure to obtain from the occupant a written acknowledgment that the adult occupant had received the EPA-approved pamphlet or to obtain a certificate of mailing prior to renovation:	\$ 580
Count 4 - Failure to cover the interior floor surface with plastic sheeting:	\$ 6,000

Count 5 - Failure to cover the ground with plastic sheeting:	\$ 6,000
Count 6 - Failure to ensure that dust and debris from the renovation did not contaminate other buildings or other areas of the property or migrate to adjacent properties:	\$ 6,000
Count 7 - Failure to ensure individuals performing renovation activities are either certified renovators or have been trained by a certified renovator:	\$ 4,500

4.3 Complainant has reviewed publicly available information on Respondent's financial condition and has found no information indicating that Respondent is unable to pay the proposed penalty. Complainant will consider any information submitted by Respondent related to its ability to pay the proposed penalty.

V. OPPORTUNITY TO REQUEST A HEARING

5.1 As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or the appropriateness of the penalty proposed herein. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

5.2 Respondent's Answer, including any request for hearing, must be in writing and must be filed with:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue,
Suite 900 (Mail Stop ORC-158)
Seattle, Washington 98101

VI. FAILURE TO FILE AN ANSWER

6.1 To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

6.2 In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1 Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact:

Robert Hartman, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 900 (Mail Stop ORC-158)
Seattle, Washington 98101
(206) 553-0029

7.2 Note that a request for an informal settlement conference does not extend the 30 day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

7.3. Respondent is advised that pursuant to 40 C.F.R. § 22.8, after the Complaint is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

VIII. PAYMENT OF PENALTY

8.1 As provided in 40 C.F.R. § 22.18(a)(1), Respondent may resolve the proceeding at any time by paying the specific penalty proposed in the Complaint and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment (at the address noted in Section V of the Complaint). If the Respondent pays the proposed penalty in full within 30 days after receiving the complaint, no Answer need be filed. Respondent can obtain a 30 day extension to pay the proposed penalty in full without filing an Answer by complying with the requirements of 40 C.F.R. § 22.18(a). Payment of the proposed penalty must be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the proposed penalty in this Complaint to the following address:

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

A transmittal letter indicating Respondent's name, complete address, and this case docket number must accompany each payment. A copy of each check should also be provided to Robert Hartman at the address shown in Section VII of this Complaint.

Dated this 30th day of September 2014.



Kate Kelly, Director
Office of Air, Waste and Toxics

Certificate of Service

The undersigned certifies that the original of the attached **COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING. In the Matter of: Ronald Edwin Dyer Docket No.: TSCA-10-2014-0164**, was filed and served on the addressees in the following manner on the date specified below:

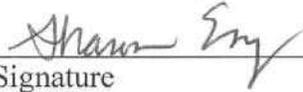
The undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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:

Ronald Edwin Dyer
1604 NE 139th Avenue
Vancouver, Washington 98684

DATED this 30th day of September, 2014



Signature
EPA Region 10

