

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
 The Gutter Experts LLC,) **Docket No. TSCA-07-2023-0096**
)
 Respondent.)
 _____)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) and The Gutter Experts 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, *Lead-Based Paint Renovation, Repair and Painting Rule*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is a limited liability company under the laws of and doing business in the state of Missouri.

Statutory and Regulatory Background

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. 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. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R., Part 745, Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standards for renovations that disturb painted surfaces in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. 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.

10. 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, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

11. 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).

12. 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.

13. 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.

14. 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.

15. 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 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 \$46,989 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023. Pursuant to Section 16(a)(2)(C), “[t]he Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed [under this subsection].”

General Factual Allegations

16. On or about April 5, 2022, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 6125 South Farm Road 209 in Rogersville, Missouri (“the Property”) to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on May 10, 2022.

17. Respondent is, and at all times referred to herein was, a limited liability company organized under the laws of and doing business in the state of Missouri.

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

19. At the time of the EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was engaged in a “renovation” of the Property as defined by 40 C.F.R. § 745.83. The EPA inspection revealed that Respondent was replacing at least six windows at the Property (“the renovation”).

20. At all times relevant to this Consent Agreement and Final Order, Respondent’s renovation was a “renovation for compensation” per 40 C.F.R. § 745.82(a).

21. At all times relevant to this Consent Agreement and Final Order, the Property was “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Property was built in 1890.

22. At the time of the renovation, the Property was owned by a party other than Respondent and was not occupied.

23. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activities at the Property.

Allegations of Violation

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

Count 1

25. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

26. Pursuant to 40 C.F.R. §§ 745.89(a)(1), a firm that performs renovations for compensation must apply for certification to perform renovations. Further, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

27. The EPA inspection revealed that Respondent, despite performing renovations on the Property which constituted target housing, had not applied to or obtain certification to perform renovations from the EPA.

28. Respondent’s failure to obtain firm certification from the EPA as required by 40 C.F.R. § 745.89(a)(1) is a violation of 40 C.F.R. § 745.89(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

29. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

30. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must assign a certified renovator to each renovation performed by the firm to discharge all of the certified renovator responsibilities enumerated under 40 C.F.R. § 745.90.

31. The EPA inspection revealed that Respondent had not assigned a renovator certified by the EPA to perform renovations at the Property.

32. Respondent's failure to assign a certified renovator is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

33. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

34. Pursuant to 40 C.F.R. § 745.84(a)(1)(i), a firm performing renovations on target housing must, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, obtain, from the owner, a written acknowledgement that the owner has received the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*.

35. The EPA inspection revealed that Respondent never obtained written acknowledgement from the owner of the Property that they had received the EPA pamphlet.

36. Respondent's failure to obtain written acknowledgement from the owner of the Property of the EPA pamphlet is a violation of 40 C.F.R. § 745.84(a)(1)(i). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

37. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

38. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), a firm performing renovations, before beginning the renovation, 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 line prevents 10 feet of such ground covering.

39. The EPA inspection revealed that Respondent failed to cover the ground around the perimeter of the exterior of the Property undergoing renovation with any plastic sheeting or impermeable material.

40. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material as required by 40 C.F.R. § 745.85(a)(2)(ii)(C) is a violation of 40 C.F.R. § 745.89(d)(3). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

41. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

42. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

43. The EPA inspection revealed that Respondent failed to contain waste from renovation activities at the Property to prevent release of dust and debris, with painted debris found on the ground around the Property.

44. Respondent's failure to contain waste from renovation activities as required by 40 C.F.R. § 745.85(a)(4)(i) is a violation of 40 C.F.R. § 745.89(d)(3). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

45. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

46. Pursuant to 40 C.F.R. § 745.85(a)(1), firms performing renovations 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. 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.

47. The EPA inspection revealed that Respondent failed to post any warning signs which would clearly define the work area or warn occupants and other persons not involved in renovation activities to remain outside of the work area.

48. Respondent's failure to post warning signs as required by 40 C.F.R. § 745.85(a)(1) is a violation of 40 C.F.R. § 745.89(d)(3). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

49. 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 the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

50. 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.

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

52. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following e-mail address: jprice@carnahanevans.com.

Penalty Payment

53. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of One Thousand Three Hundred Forty-Six Dollars and Forty Cents (\$1,346.40).

54. Respondent shall pay the penalty within thirty (30) days 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>.

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

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Sam Bennett, Attorney
bennett.sam@epa.gov

56. 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. 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 (6) percent 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

57. Full payment of the penalty proposed and performance of the conditions 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.

58. 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.

59. Respondent certifies by the signing of this Consent Agreement that it does not presently perform, offer, or claim to perform any renovations regulated under the requirements of TSCA and does not have any current plans to do so. Respondent further certifies that, if in the future it intends to perform regulated renovations, it will comply with all requirements of TSCA and its implementing regulations including, but not limited to, obtaining firm certification under 40 C.F.R. § 745.89(a) prior to performing, offering, or claiming to perform any regulated renovation.

60. Full payment of the penalty proposed and performance of the conditions 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.

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

62. This CAFO constitutes a “prior such violation” as that term is used in EPA’s Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent’s “history of prior such violations” under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

General Provisions

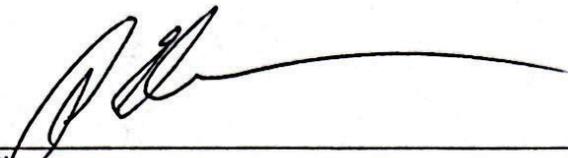
63. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

64. 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 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

66. 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.

RESPONDENT
THE GUTTER EXPERTS LLC



Signature

June 1st 2023

Date

Aaron Ehrlich

Printed Name

Owner

Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Sam Bennett
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(To be Completed by EPA)

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

Copy via E-mail to Complainant:

Sam Bennett
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
bennett.sam@epa.gov

Amelia Patterson
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
patterson.amelia@epa.gov

Milady Peters
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
peters.milady@epa.gov

Copy via E-mail to Respondent's Attorney:

John Price
Carnahan Evans PC
2805 S. Ingram Mill Rd.
Springfield, MO 65804
jprice@carnahanevans.com

Dated this _____ day of _____, 2023.

Signed