

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

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2017 JAN 25 AM 9:15

In the Matter of )  
 )  
Maria C. Soto Peres ) Docket No. TSCA-07-2017-0006  
 )  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA), Region 7 and Maria C. Soto Peres, doing business as AKE Contracting (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 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 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 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 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, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.
4. Respondent is an individual 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 the 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. 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 standard 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. 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. 40 C.F.R. §§ 745.80(a) and 745.82(a).

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 (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

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, 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 \$37,500 for each violation of Section 409 of TSCA. Each day that such violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689.

### **General Factual Allegations**

16. On or about May 10, 2016, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted a renovation records inspection at 2819 Osceola Street in St. Louis, Missouri 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 June 16, 2016.

17. Respondent is, and at all times referred to herein was, an individual doing business as AKE Contracting 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 “renovation” activities as defined by 40 C.F.R. § 745.83. The records collected as a result of the EPA inspection revealed that Respondent completed work that resulted in the disturbance of painted surfaces including demolition, sheetrock replacement, window replacement, trim removal and replacement and painting on at least four (4) property locations (the “Properties”) from September 2015 through May 2016.

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

21. At all times relevant to this Consent Agreement and Final Order, the Properties were “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 Properties were built in 1904, 1926, 1890 and 1928. Further, the EPA inspection revealed that Respondent had not tested the affected renovation areas for the presence of lead-based paint prior to beginning surface preparation work.

22. 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**

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

#### **Count 1**

24. The facts stated in Paragraphs 16 through 22 above are herein incorporated.

25. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations in target housing or child-occupied facilities, without certification from EPA.

26. The EPA inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Properties.

27. Respondent’s failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 2–5

28. The facts stated in Paragraphs 16 through 22 above are herein incorporated.

29. Pursuant to 40 C.F.R. § 745.84(a)(1), prior to beginning renovation activities, firms performing renovations must provide the property owner with the EPA-approved Renovate Right Pamphlet and obtain, from the owner, a written acknowledgement that the owner has received the pamphlet.

30. The EPA inspection revealed that Respondent failed to provide the owners of the Properties with the EPA approved Renovate Right Pamphlet and failed to obtain, from each owner, a written acknowledgement that the owner received the pamphlet.

31. Respondent's failure to provide the owners of the Properties with the EPA approved Renovate Right Pamphlet and failure to obtain, from each owner, a written acknowledgement that the owner received the pamphlet, is a violation of 40 C.F.R. 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 6–9

32. The facts stated in Paragraphs 16 through 22 above are herein incorporated.

33. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm.

34. The EPA inspection revealed that Respondent failed to assign a certified renovator to each of the renovations completed at the Properties.

35. Respondent's failure to assign a certified renovator to each of the renovations performed by the firm at the Properties is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 10–13

36. The facts stated in Paragraphs 16 through 22 above are herein incorporated.

37. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and if requested, make available to EPA all records necessary to demonstrate compliance with the *Lead-Based Paint Renovation, Repair and Painting Rule* for a period of three (3) years following completion of the renovation.

38. The EPA inspection revealed that Respondent failed to retain all records necessary to demonstrate compliance with the *Lead-Based Paint Renovation, Repair and Painting Rule* for the renovations completed on the Properties.

39. Respondent's failure to retain all records to demonstrate compliance with the

*Lead-Based Paint Renovation, Repair and Painting Rule* for the renovations completed on the Properties is a violation of 40 C.F.R. § 745.86(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**CONSENT AGREEMENT**

40. 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 alleged violations set forth herein; and
  - (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.
41. Respondent consents to the issuance of this Consent Agreement and Final Order.
42. 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.

**Penalty Payment**

43. Respondent and Complainant agree that, in settlement of the claims herein, Respondent shall pay a mitigated penalty of Zero Dollars (\$0.00). EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), and has determined that the appropriate penalty for the violations is Five Thousand Forty Dollars (\$5,040.00). This penalty has been adjusted to reflect Respondent's size of business. However, pursuant to the statutory requirement that EPA consider a Respondent's ability to pay, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

**Conditions**

44. Respondent certifies by the signing of this Consent Agreement and Final Order

that it completed EPA-accredited renovator training on September 12, 2016 to become a certified renovator, has received EPA firm certification, and is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

### **Effect of Settlement and Reservation of Rights**

45. 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.

46. This Consent Agreement shall not in any case affect the right of the EPA 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.

47. The effect of settlement described in Paragraph 45 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 48 herein.

48. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA.

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

### **General Provisions**

50. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

51. 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.

52. The Final Order portion of this Consent Agreement and Final order shall apply 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**  
**Maria C. Soto Peres**

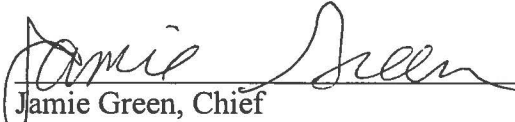
Date: 01-12-17

By: Carmen Soto  
Carmen Soto  
Print Name




**COMPLAINANT  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 1/23/2017

  
\_\_\_\_\_  
Jamie Green, Chief  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division

Date: 1/18/2017

  
\_\_\_\_\_  
Clarissa Howley Mills  
Office of Regional Counsel  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Phone: (913) 551-7743  
*mills.clarissa@epa.gov*

**FINAL ORDER**

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, 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

Karina Borromeo  
Regional Judicial Officer

Jan. 25, 2017

Date

IN THE MATTER Of Maria C Soto Peres, Respondent  
Docket No. TSCA-07-2017-0006

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 via Email to Attorney for Complainant:


mills.clarissa@epa.gov

Copy via Email and First Class Mail to Respondent:

carmenake1523@outlook.com

Carmen Soto  
AKE Contracting  
2819 Osceola Street  
St. Louis, Missouri 63111

Dated: 1/25/17

  
Kathy Robinson  
Hearing Clerk, Region 7

