



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA UPS OVERNIGHT

Donald Saxton, Jr., Esquire
1200 Washington Road
Washington PA 15301

August 23, 2016


Re: Consent Agreement and Final Order

Dear Mr. Saxton:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order filed today with the Regional Hearing Clerk. Thank you for your assistance in bringing this matter to a speedy resolution.

If you have any additional question or concerns please contact by e-mail Ramalho.Louis@epa.gov or by telephone at (215) 814-2681.

Sincerely,



Louis F. Ramalho
Sr. Asst. Regional Counsel

Enclosures

cc: Annie Hoyt, EPA (w/o enclosures)

2016 AUG 23 PM 3:18
RECEIVED
REGIONAL COUNSEL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Docket No. TSCA-03-2016-0191

FROM:

Mary B. Coe
Regional Counsel (3RC00)

John A. Armstead, Director
Land and Chemicals Division (3LC00)

TO:

Joseph J. Lisa
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order (“CAFO”) have been negotiated with Yohe Roofing Inc. (“Respondent”) in settlement of actionable Toxic Substances Control Act (“TSCA”) violations. The compliance issues addressed in the CAFO involve the alleged failure, during the performance of a renovation for compensation on certain pre-1978 housing, to comply with the Lead; Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth at 40 C.F.R. Part 745, Subpart E, which subject Respondent to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

The litigation team calculated a civil penalty of Seven Thousand One Hundred and Twenty-Six Dollars (\$7,126.00), plus any applicable interest, in accordance with the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent’s ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, and with EPA’s *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“LBP Consolidated ERPP”), dated August 2010 and revised April 2013. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.

We recommend that you sign the attached Final Order assessing Seven Thousand One Hundred and Twenty-Six Dollars (\$7,126), plus any applicable interest, in civil penalties against Respondent. After you execute the Final Order, please return the documents to Louis F. Ramalho of the Office of Regional Counsel for further processing.

Attachments

cc: Donald Saxton, Jr., Esquire
1200 Washington Road
Washington PA 15301
(724) 344-4860
dsaxton@donaldsaxtonlaw.com

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. Pursuant to 40 C.F.R. § 745.83, the term “firm” means “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.”
12. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means “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.”

13. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “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) or any 0-bedroom dwelling.”
14. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “person” and a “firm,” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83 at the following properties: 102-108 East High Street, Waynesburg PA (“102-108 East High St.”).
15. 102-108 East High St., referred to above, was constructed prior to 1978 and is “target housing” as that term is defined at 40 C.F.R. § 745.103.
16. Respondent entered into a contract on or around April 10, 2014, May 29, 2014, and June 19, 2014, for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. § 745.82(a) at 102-108 East High St.
17. The “renovation performed for compensation” at 102-108 East High St. did not involve a renovation in target housing or a child-occupied facility in which:
 - (1) “a written determination ha[d] been made by an inspector or risk assessor ... that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) “a certified renovator, using an EPA recognized test kit . . ., has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(2); or
 - (3) “a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(3).
18. On October 2, 2014, Complainant conducted an inspection of Respondent’s business records, to further determine Respondent’s level of compliance with the RRP rule in regards to certain renovation activities performed by Respondent at 102-108 East High St.

V. VIOLATIONS ALLEGED

Count 1

19. The allegations contained in Paragraphs 1 through 18 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
20. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms are required to obtain initial certification from EPA under § 745.89 prior to performing renovations at target housing.
21. On or about April 10, 2014, May 29, 2014, and June 19, 2014, Respondent performed a renovation at 102-108 East High St.
22. Respondent failed to obtain initial lead-safe firm certification from EPA prior to performing the renovation on or about April 10, 2014, May 29, 2014, and June 19, 2014, at 102-108 East High St.
23. **Count 1:** Under 40 C.F.R. § 745.81(a)(2)(ii), failure to obtain initial firm certification from EPA prior to performing the renovation at 102-108 East High St., referred to in Paragraph 22, above, constitutes a violation of 40 C.F.R. §745.87(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

24. The allegations contained in Paragraphs 1 through 23 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
25. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations are required to ensure 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.
26. On or about April 10, 2014, May 29, 2014, and June 19, 2014, the individuals performing renovation activities on behalf of Respondent during the renovation at 102-108 East High St. were neither certified renovators or trained by a certified renovator in accordance with 40 C.F.R. § 745.90.
27. **Count 2:** Under 40 C.F.R. § 745.81(d)(1), failure to ensure the individuals performing renovation activities during the renovation at 102-108 East High St., referred to in Paragraph 26, above, constitutes a violation of 40 C.F.R. § 745.87(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

28. The allegations contained in Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
29. Pursuant to 40 C.F.R. § 745.84(a)(1)(i), a firm performing a renovation must provide the owner of the unit with the Renovate Right pamphlet, and either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation.
30. At the time of the October 2, 2014 inspection, Respondent did not have the owner's acknowledgment of receipt of the pamphlet or a certificate of mailing sent at least 7 days before the renovation at 102-108 East High St.
31. **Count 3:** Under 40 C.F.R. § 745.84(a)(1)(i), failure to either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation, for the renovation at 102-108 East High St. referred to in Paragraph 30, above, constitutes a violation of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 4

32. The allegations contained in Paragraphs 1 through 31 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
33. 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 this subpart, 40 C.F.R. § 745, Subpart E, for a period of 3 years following completion of the renovation.
34. Pursuant to 40 C.F.R. § 745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
35. At the time of the October 2, 2014 inspection, Respondent had not retained records for the renovation performed at 102-108 East High St. documenting a certified renovator performed or directed workers to perform the tasks required by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

36. **Count 4:** Under 40 C.F.R. § 745.86, Respondent's failure to retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), during the renovation at 102-108 East High St., referred to in Paragraph 35, above, constitutes a violation of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

VI. CIVIL PENALTY

37. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Seven Thousand One Hundred and Twenty-Six Dollars (\$7,126.00)** which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty of \$7,126.00 within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
38. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP")*, dated August 2010. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.
39. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2016-0191**;
 - b. All checks shall be made payable to "**United States Treasury**";

- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

40. Respondent may also pay the amount described in Paragraph 48 (or Paragraph 50 if applicable) above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

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 wire transfer message should read:
“D 68010727 Environmental Protection Agency”)

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis Ramalho (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
42. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
43. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
44. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

45. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

46. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

47. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of TSCA and 40 C.F.R. Part 745.

X. RESERVATION OF RIGHTS

48. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

- F This Consent Agreement and the accompanying Final Order shall apply to and be binding
49. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

50. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

51. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

52. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent:

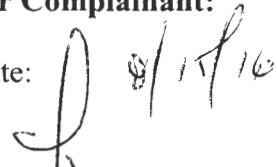
Date: 8/2/16



Yohe Roofing
Mark Yohe
President
(724) 258-9373

For Complainant:

Date:

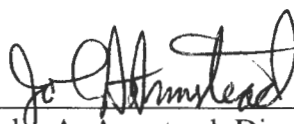


US EPA, Region III
Louis Ramalho, 3RC50
Sr. Assistant Regional Counsel
(215) 814-2603

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 8.18.16

By:



John A. Armstead, Director
Land and Chemicals Division,
U.S. EPA, Region III


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, a true and correct copy of the attached Consent Agreement and Final Order, Docket No. TSCA-03-2016-0191, was sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

Donald Saxton, Jr., Esquire
1200 Washington Road
Washington PA 15301
(724) 344-4860
dsaxton@donaldsaxtonlaw.com

Date

8/23/16



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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2016 AUG 23 PM 3:18
U.S. EPA - REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029