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

BEFORE THE ADMINISTRATOR

In the Matter of:

Acuity Renovation Concepts, LLC,

)
)
) **Docket No. TSCA-07-2018-0291**
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)
)

Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Acuity Renovation Concepts, 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 instituted pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a). Pursuant to Section 16(a)(2)(C), the Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection.

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, by delegation from the Administrator of the 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 Acuity Renovation Concepts, LLC, a business registered 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 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. 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. § 745.89(a)(1) provides that firms performing 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 without certification from EPA in target housing or child-occupied facilities.

15. The regulation at 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.

16. 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.

17. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by 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 \$37,500 per day for violations that occurred after January 12, 2009. Congress

amended TSCA in June 2016, increasing the statutory maximum penalty to \$37,500. P.L. No: 114-182. The 2017 Civil Monetary Penalty Inflation Adjustment Rule, 82 Fed. Reg. 3633 (Jan. 12, 2017), promulgated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, increased these statutory maximum penalties to \$38,114 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017. Most recently, the 2018 Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (Jan. 10, 2018), promulgated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, increased these statutory maximum penalties to \$38,892 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

General Factual Allegations

18. On or about August 28, 2017, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted a work site inspection at 430 W 59th Terrace in Kansas City, 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 November 15, 2017.

19. Respondent is, and at all times referred to herein was, a business registered in the state of Missouri.

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

21. EPA's inspection indicated that, at all times relevant to this Consent Agreement and Final Order, Respondent engaged in a "renovation" of the Property as defined by 40 C.F.R. § 745.83.

22. 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).

23. At all times relevant to this Consent Agreement and Final Order, 430 W 59th Terrace, Kansas City, Missouri was "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17) and renovations were performed at 430 W 59th Terrace in Kansas City, Missouri ("the Property"):

24. As a result of the EPA inspection, 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

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

Count 1

26. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

27. 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 without certification from EPA in target housing or child-occupied facilities.

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

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

Count 2

30. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

31. Pursuant to 40 C.F.R. § 745.89(d)(2), firms that perform renovations must assign a certified renovator to each renovation performed by the firm and ensure that the renovator discharges all of the certified renovator responsibilities identified in § 745.90.

32. The EPA inspection revealed that Respondent failed to assign a certified renovator to each renovation performed by the firm and ensure that the renovator discharged all of the certified renovator responsibilities identified in § 745.90.

33. Respondent's failure to assign a certified renovator to each renovation 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

34. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

35. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations must, no more than 60 days before beginning renovation activities, provide the owner of the unit with the EPA approved lead hazard information pamphlet and obtain written acknowledgement from the owner or a certificate of mailing at least 7 days prior to the renovation.

36. The EPA inspection revealed that Respondent failed to provide the owner of the unit with the EPA approved lead hazard information pamphlet no more than 60 days before beginning renovation activities as required by 40 C.F.R. § 745.84(a)(1).

37. Respondent's failure to provide the owner of the unit with the EPA approved lead hazard information pamphlet no more than 60 days before beginning renovation activities is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

38. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

39. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warn occupants and other persons not involved in renovation activities to remain outside of the work area.

40. The EPA inspection revealed that Respondent failed to post signs clearly defining the work area and warn occupants and other persons not involved in renovation activities to remain outside of the work area.

41. Respondent's failure to post signs clearly defining the work area and warn occupants is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

42. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

43. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(B), 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.

44. The EPA inspection revealed that Respondent failed to ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area.

45. Respondent's failure to ensure that doors within the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(B) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

46. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

47. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), firms must cover the ground with

plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surface undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

48. The EPA inspection revealed that Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surface undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

49. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material per the regulations is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

50. The facts stated in Paragraphs 18 through 24 above are herein incorporated.

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

52. The EPA inspection revealed that Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).

53. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

54. 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.

55. 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.

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

Penalty Payment

57. 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 \$45,668. 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.

Effect of Settlement and Reservation of Rights

58. 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.

59. 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.

60. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

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

General Provisions

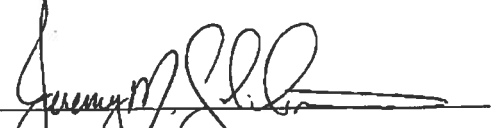
62. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

63. 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 the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

64. 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
Acuity Renovations Concepts, LLC

Date: 10/1/18


By: 

Jeremy M. SCHNEIDER
Print Name

MEMBER
Title

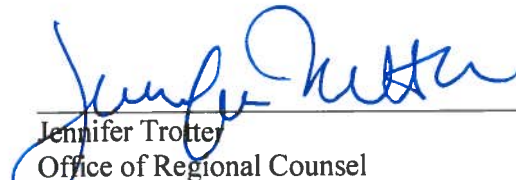
COMPLAINANT
U. S. Environmental Protection Agency

Date: 10/3/18



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

Date: 10/3/18



Jennifer Trotter
Office of Regional Counsel

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~~ Kathleen Clever
Regional Judicial Officer

10-12-18
Date

CERTIFICATE OF SERVICE

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 Email to Complainant:

Jennifer Trotter

Copy via Certified Mail, Return Receipt Requested to Respondent:

Mr. James Kreidler, Attorney at Law
Wengman Law Firm
Acuity Renovation Concepts, LLC
PO Box 740
Court House Square
Hillsboro, Missouri 63050

Dated this 15 day of October, 2018.



Signed