

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

In the Matter of:)
) Docket No. TSCA- 07-2015-0005
)
Tony Kapple)
d/b/a Kapples Building Remodeling)
1013 Hiatt Street)
Carter Lake, Iowa 51510)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Tony Kapple, d/b/a Kapples Building Remodeling, (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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I
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 (CAFO) 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 (Renovation Repair and Painting Rule a/k/a “RRP” Rule), which were authorized for promulgation by Section 402 of TSCA, 15 U.S.C. § 2682.

Section II **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Tony Kapple, d/b/a Kapples Building Remodeling, an individual who has conducted business in the state of Nebraska. The Respondent meets the definition of a “Firm” and of a “Person,” as those terms are set forth in 40 C.F.R. § 745.83.

Section III **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. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. On June 1, 1998, EPA promulgated information distribution and record keeping requirements codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. § 2686. On April 22, 2008, EPA amended and re-codified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, Lead-Based Paint Renovation, Repair and Painting Rule (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686 and 2687. The regulations aimed to protect the public from

lead-based paint hazards associated with renovation, repair and painting activities. Under the RRP Rule each person or firm who performs for compensation a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities. Firms and individuals performing renovation, repair and painting projects for compensation that disturb lead-based paint must use certified renovators who follow specific work practices to prevent lead contamination. Prior to the start of renovation, the firm or individual performing the renovation must provide the owners and occupants of the target housing units subject to regulated renovation, repair, and/or painting a copy of the U.S. Environmental Protection Agency-approved Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools pamphlet, and maintain written acknowledgment that the pamphlet has been provided.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. EPA promulgated regulations regarding lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. Part 745, Subpart E.

9. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations to require each person who performs for compensation a renovation of

target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

10. EPA promulgated regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. These regulations are found within 40 C.F.R. Part 745, Subpart E.

11. 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 six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. 15 U.S.C. § 2681(17).

12. 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 this part (40 C.F.R. § 745.223). The term renovation includes but is not limited to the following: 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. 40 C.F.R. § 745.83.

13. 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. 40 C.F.R. § 745.83.

14. 40 C.F.R. § 745.89(a)(1) states that firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

15. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

16. Pursuant to 40 C.F.R. § 745.86(b)(6), certain records must be retained including, but not limited to, documentation of compliance with the work practice requirements, including documentation that a certified renovator was assigned to the project.

17. The “Work Practice Standards” that must be followed by firms performing renovations on target housing are set forth at 40 C.F.R. § 745.85. The Work Practice Standards include the Standards for Renovation Activities: Occupant Protection 40 C.F.R. § 745.85(a)(1), Containing the Work Area 40 C.F.R. § 745.85(a)(2), Prohibited and Restricted Work Practices 40 C.F.R. § 745.85(a)(3), Waste from Renovation 40 C.F.R. § 745.85(a)(4), and Cleaning the Work Area 40 C.F.R. § 745.85(a)(5). The Work Practice Standards also include the Standards for Post-Renovation Cleaning Verification activities: Interiors 40 C.F.R. § 745.85(b)(1), and Exteriors 40 C.F.R. § 745.85(b)(2).

18. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to

administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. 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 of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

Section IV
General Factual Allegations

1. Respondent is a “renovator” who performed “renovations” as defined by 40 C.F.R. § 745.83 for compensation.

2. On or about October 11, 2012, Respondent performed renovations for compensation on the property located at 6315 North 46th Avenue in Omaha, Nebraska. This property was constructed before 1978.

3. The property listed in Paragraph 2 is “target housing” as defined by 40 C.F.R. § 745.103.

Section V
Violations

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

Count 1

5. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

6. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to obtain an initial firm certification from EPA, in violation of 40 C.F.R. § 745.89(a)(1).

7. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

8. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

9. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to assign certified renovator to the renovation, in violation of 40 C.F.R. § 745.89(d)(2).

10. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

11. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

12. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to posts signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the

work area, such signs required to be posted before beginning the renovation and to remain in place until the renovation and post-renovation cleaning verification are complete, in violation of 40 C.F.R. §745.85(1).

13. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

14. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

15. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to cover the ground with plastic sheeting extending 10 feet beyond the perimeter of surfaces undergoing renovation to collect falling paint debris, in violation of 40 C.F.R. §745.85(a)(2)(ii)(C).

16. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 5

17. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

18. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area, in violation of 40 C.F.R. §745.85(a)(4)(i).

19. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 6

20. The facts stated in Paragraphs 1 through 3 above are herein incorporated.

21. Concerning the renovation of the property located at 6315 North 46th Avenue in Omaha, Nebraska, Respondent failed to provide the property owner with the EPA-approved lead hazard information pamphlet before beginning renovation activities, in violation of 40 C.F.R. §745.84(a)(1).

22. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section VI
Consent Agreement

23. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

24. Respondent neither admits nor denies the factual allegations set forth above.

25. Respondent waives his right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

26. 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.

27. Respondent certifies by the signing of this CAFO that to the best of his knowledge he is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E, and agrees that the effect of this settlement is conditioned upon the accuracy of this representation to EPA.

28. Based on EPA's consideration of Respondent's ability to pay, a Zero Dollars (\$0) civil penalty will be assessed.

29. Respondent and EPA agree that no documentation of the payment (\$0) is necessary other than this Consent Agreement.

30. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty (\$0) as specified in the Final Order.

31. Payment of this civil penalty (\$0) in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart E alleged in this document.

Section VII
Final Order

Pursuant to the provisions of TSCA, 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY**

ORDERED THAT:

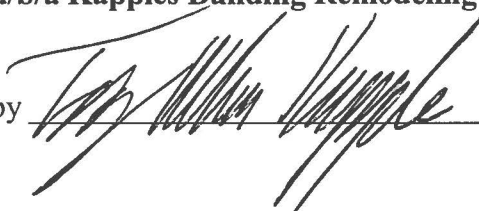
1. Respondent shall pay a civil penalty of Zero Dollars (\$0).
2. Respondent and Complainant shall each bear their own costs and attorneys' fees

incurred as a result of this matter.

RESPONDENT
Tony Kapple
d/b/a Kapples Building Remodeling

Date: 3/10/15

by



IN THE MATTER OF
Tony Kapple, d/b/a Kapples Building Remodeling
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COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/17/15

By:



Jamie Green
Chief

Toxics and Pesticides Branch
Water, Wetlands and Pesticides Division

Date: 3/17/15

By:



Robert Richards
Attorney

Office of Regional Counsel

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IT IS SO ORDERED. This Order shall become effective immediately.

Date: 3-30-2015 Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Tony Kapple d/b/a Kapples Building Remodeling, Respondent
Docket No. TSCA-07-2015-0005

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 by email to Attorney for Complainant:

richards.robert@epa.gov

Copy by First Class Mail to:

Tony Kapple
d/b/a Kapples Building Remodeling
1013 Hiatt Street
Carter Lake, Iowa 51510

Dated: 3/30/15



Kathy Robinson
Hearing Clerk, Region 7