

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

2016 SEP -7 AM 9:31

BEFORE THE ADMINISTRATOR

<p><b>In the Matter of</b></p> <p>SJ Construction, LLC</p> <p><b>Respondent</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. TSCA-07-2016-0040</b></p>
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**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and SJ Construction, LLC (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 (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 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*, (RRP Rule) promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

## **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 SJ Construction, LLC, a company in good standing under the laws of the state of Missouri.

## **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)(2), 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. § 745.89(d)(3), all renovations performed by the firm must be in accordance with the work practice standards as forth at 40 C.F.R. § 745.85. The Work Practice Standards include, but are not limited to:

a. Occupant Protection. Firms 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. To the extent practicable, these signs must be in the primary language of the occupants. 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. 40 C.F.R. § 745.85(a)(1).

b. Interior Renovations. Cover the floor surface, including installed carpet, with tape-down plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. 40 C.F.R. § 745.85(a)(2)(i)(D).

c. Exterior Renovations. Close all doors and windows within twenty (20) feet of the renovation. On multistory buildings, close all doors and windows within twenty (20) feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

d. Waste from Renovations. 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. 40 C.F.R. § 745.85(a)(4)(i).

17. 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).

18. 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 \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation 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**

19. Respondent is, and at all times referred to herein was, a “firm” and a “person” within the meaning of TSCA.

20. Respondent is a general contractor for renovation work.

21. On October 20, 2015, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the United States Environmental Protection Agency, Region 7 conducted an inspection of 2015-2029 South 9<sup>th</sup> Street, St. Louis, Missouri (hereinafter, “the Property”), where Respondent was in the process of conducting “renovations”, as defined by C.F.R. § 745.83, for compensation.

22. The Property was constructed in 1895.

23. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

24. At the time of the EPA inspection, the Respondent had not applied to become a certified firm, nor was a certified renovator assigned to the project.

25. At the time of the EPA inspection, the Respondent had not provided a copy of the *Renovate Right* pamphlet to the owner of the Property prior to initiating renovation activities.

26. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, the Respondent failed to post signs defining the work area to warn people not involved in renovation activities to remain outside the work area.

27. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, the Respondent failed to cover the floor surface with any taped-down plastic sheeting or other impermeable material in the work area.

28. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, the Respondent failed to close all doors and windows within twenty (20) feet of the renovation.

29. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, the Respondent failed to contain waste from the renovation to prevent releases of dust and debris before the waste was removed from the work area for disposal.

### **Violations**

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

### **Count 1**

31. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

32. At the time of the EPA inspection it was discovered that Respondent failed to

apply for and obtain EPA firm certification prior to commencing the renovation for compensation on the Property, which is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

33. Respondent's failure to perform the act described 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**

34. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

35. At the time of the EPA inspection it was discovered that Respondent failed to assign a certified renovator prior to commencing the renovation for compensation on the Property, which is a violation of 40 C.F.R. § 745.89(d)(2).

36. Respondent's failure to perform the act described 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**

37. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

38. At the time of the EPA inspection it was discovered that Respondent failed to provide the owner of the Property with the EPA-approved *Renovate Right* pamphlet prior to commencing the renovation for compensation on the Property, which is a violation of 40 C.F.R. § 745.84(a)(1).

39. Respondent's failure to perform the act described 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**

40. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

41. At the time of the EPA inspection it was discovered that Respondent failed post signs defining the work area and warning people not involved in the renovation activities to remain outside of the work area at the Property, which is a violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(1).

42. Respondent's failure to perform the act described 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**

43. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

44. At the time of the EPA inspection it was discovered that Respondent failed to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area in violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(2)(i)(D),

45. Respondent's failure to perform the act described 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**

46. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

47. At the time of the EPA inspection it was discovered that Respondent failed to close all doors and windows within twenty (20) feet of the renovation at the Property, which is a violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(2)(ii)(A).

48. Respondent's failure to perform the act described 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 7**

49. The facts stated in Paragraphs 19 through 29 above are herein incorporated.

50. At the time of the EPA inspection it was discovered that Respondent failed to contain waste from renovation activities in a manner that prevents releases of dust and debris before the waste is removed from the work area for storage or disposal at the Property which is a violation of 40 C.F.R. § 745.89(d)(3) referencing 40 C.F.R. § 745.85(a)(4)(i).

51. Respondent's failure to perform the act described 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 V**

**Consent Agreement**

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

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

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

55. 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.

56. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

57. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

58. The effect of settlement described in Paragraph 59 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 56 of this Consent Agreement and Final Order.

59. 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 \$32,680. 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 in this Consent Agreement and Final Order.

60. As part of settlement, Respondent became an EPA Certified Firm, and assigned a Certified Renovator to the project.

## Section VI

### Final Order

Pursuant to the provisions of the Toxic Substances Control Act (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. Based on an analysis of Respondent's ability to pay, EPA is not assessing a civil penalty in this matter.

2. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

3. This CAFO 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.

**RESPONDENT**  
**SJ CONSTRUCTION, LLC**


Date: 8/29/2016

By: 

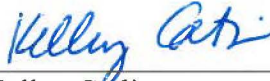
Heping Jiao  
Print Name

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

Date: 9/6/16

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

Date: 9/6/16

  
\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

**IT IS SO ORDERED.** The Final Order shall become effective upon filing.

Date: Sept. 7, 2016

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency

IN THE MATTER Of SJ Construction, LLC, Respondent  
Docket No. TSCA-07-2016-0040

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 emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

Heping Jiao  
SJ Construction  
8271 Cora Court  
Mason, Ohio 45040

Dated: 9/7/16



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7