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EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|------------------------------|---|------------------------------|
| In the Matter of: |) | DOCKET NO. TSCA-10-2019-0024 |
| |) | |
| GALL CONSTRUCTION CO., INC., |) | CONSENT AGREEMENT |
| |) | |
| Puyallup, Washington, |) | |
| |) | |
| Respondent. |) | |
| |) | |

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Gall Construction Co., Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C.

§ 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violation of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The State of Washington is authorized under Section 404(a) of TSCA, 15 U.S.C. § 2684(a), and 40 C.F.R. § 745.324(d) to administer and enforce requirements for a renovation, repair, and painting (RRP) program in accordance with Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with Section 406(b) of TSCA, 15 U.S.C. § 2686(b).

3.2. Section 404(b) of TSCA, 15 U.S.C. § 2684(b), makes it unlawful for any person to violate or fail or refuse to comply with any requirement of a state program authorized under Section 404 of TSCA, 15 U.S.C. § 2684. See also 40 C.F.R. § 745.324(f)(3).

3.3. The Washington Administrative Code (“WAC”) Title 365 applies to renovations performed for compensation in target housing as specified in the WAC, Chapter 365-230.

3.4. “Target housing” is defined under WAC 365-230-020(78) to mean “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities).”

3.5. “Person” is defined at WAC 365-230-020(61) to include “any natural or judicial person including any individual, corporation, partnership, or association.”

3.6. "Firm" is defined at WAC 365-230-020(38) to mean "a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington."

3.7. "Renovation" is defined at WAC 365-230-310 to mean "the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces 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."

3.8. "Renovator" is defined at WAC 365-230-310 as "an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized state or tribal program."

3.9. Respondent is a corporation organized in the State of Washington.

3.10. Respondent is therefore a "firm" within the meaning of WAC 365-230-020(38).

3.11. On or about September 21, 2016, Respondent offered to perform work for compensation at a residential property located at 3616 Tacoma Avenue South, Tacoma, Washington, which was built in 1919 ("the Tacoma Avenue Renovation").

3.12. On or about February 6, 2017, Respondent performed work for compensation at the Tacoma Avenue Renovation.

3.13. The Tacoma Avenue Renovation involved Respondent replacing windows and painted exterior siding, installing drywall, and removing a chimney, which resulted in the disturbance of painted surfaces.

3.14. Therefore, Respondent offered to perform and performed a “renovation” on “target housing,” as these terms are defined at WAC 365-230-310 and WAC 365-230-020(78).

COUNT 1

3.15. Pursuant to WAC 365-230-360(1), no firm may perform, offer, or claim to perform renovations for compensation without first being certified by the Washington State Department of Commerce.

3.16. The Washington State Department of Commerce received Respondent’s firm certification application form on February 21, 2017

3.17. Respondent received RRP firm certification from the Washington State Department of Commerce on April 4, 2017.

3.18. Respondent’s failure to become firm certified prior to offering to perform the Tacoma Avenue Renovation is a violation of WAC 365-230-360(1).

ENFORCEMENT AUTHORITY

3.19. Under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$38,892 for each such violation, each day such a violation continues.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, 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. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Kim Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-201
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
farnham.kim@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11/8/18

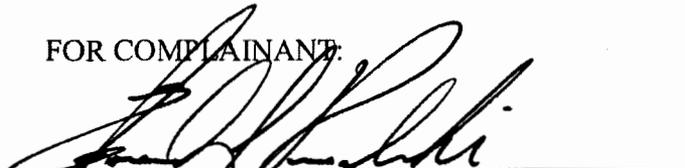
FOR RESPONDENT:


DANNY BELCHER, President
Gall Construction Co., Inc.

DATED:

11/9/2018

FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|------------------------------|---|------------------------------|
| In the Matter of: |) | DOCKET NO. TSCA-10-2019-0024 |
| |) | |
| GALL CONSTRUCTION CO., INC., |) | FINAL ORDER |
| |) | |
| Puyallup, Washington, |) | |
| |) | |
| Respondent. |) | |
| |) | |

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 13th day of November, 2018.



RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Gall Construction Co., Inc., Docket No.: TSCA-10-2019-0024**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Danny Belcher
President
Gall Construction Co., Inc.
P.O. Box 731911
Puyallup, Washington 98373

DATED this 13 day of November, 2018.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10