



failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to Title IV (15 U.S.C. 2681-2692) of TSCA

## **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 Midtown Home Improvements, Inc., 4118 North Service Road, Saint Peters, 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. Section 406(b) of the law directed EPA to issue regulations requiring that compensated renovators distribute an approved lead information pamphlet to owners and occupants of housing constructed before the phase out of residential lead-based paint use in 1978 before beginning renovations. The regulations became effective on June 1, 1999 and are codified at 40 C.F.R. Part 745 Subpart E. The failure or refusal to comply with the regulations is a violation of Section 409 of TSCA.

**Section IV**

**Violation**

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

7. Respondent is and at all times referred to herein was a "person" within the meaning of TSCA.

8. Respondent is a "renovator" who performed "renovations" as defined by 40 C.F.R. § 745.83 for compensation.

9. Respondent performed renovations on the following properties: 9563 Plainfield, Rockhill, Missouri; 921 Crestland Drive, Ballwin, Missouri; and, 11 willow Hill road, St. Louis, Missouri. These properties were constructed before 1978.

10. These properties are ~~A~~target housing~~@~~ as defined by 40 C.F.R. § 745.103.

11. Respondent failed to provide the owners and/or occupants of the properties listed in Paragraph 9, above, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property.

12. Respondent's failure to perform the acts indicated in paragraph 11 above are violations of 40 C.F.R. § 745.84(a) and 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.

**Consent Agreement**

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

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

15. 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.

16. 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.

17. 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.

18. 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.

19. Payment of this civil penalty 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.

20. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

21. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP) within ninety days from the date this agreement is finalized, which the parties agree is intended to secure significant environmental and/or public

health benefit. Respondent will donate 60 48" by 48" ceiling panels to Bais Abraham Congregation, 6910 Delmar, University City, Missouri for use in its social hall. Total cost of the SEP is estimated at approximately \$5,343.

22. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

A detailed description of the SEP as implemented including an invoice for the total number of ceiling panels delivered and the cost of the panels.

The report shall be directed to the following:

Maria Morey  
WWPD/TOPE  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

23. If the SEP referenced in Paragraph 21 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control

rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 22 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

24. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

25. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

26. Respondent certifies it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for

providing federal financial assistance whose performance period has not yet expired.

27. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: A This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency. @

## 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. Respondent shall pay a civil penalty of One Thousand Three Hundred and Fifty-three Dollars and Fifty Cents (\$1,353.50) within thirty (30) days of the effective date of this Final Order. The payment shall be identified as **In the Matter of Midtown Home Improvement, Inc.** Such payment shall identify Respondent by name and docket number and shall be by certified or cashier=s check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

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 Fedwire message should read  
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kent Johnson, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

**RESPONDENT**

**Midtown Home Improvements, Inc.**

Date: 9-13-11 By: 

L. Patrick Melsan  
Print Name

V.P.  
Title

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

Date: 9/20/11

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

Date: 9/19/11

  
\_\_\_\_\_  
Kent Johnson  
Office of Regional Counsel

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

Date: Sept. 26, 2011 Robert L. Patrick  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Midtown Home Improvements, Inc., Respondent  
Docket No. TSCA-07-2011-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Amended Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Barry Ginsburg  
Midtown Home Improvements, Inc.  
4118 North Service Road  
St. Peters, Missouri 63376

Dated: 9/27/11



Kathy Robinson  
Hearing Clerk, Region 7