

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

2015 SEP 16 PM 12: 51

**BEFORE THE ADMINISTRATOR**

**In the Matter of**

Bielenberg Builders, Inc.  
Lincoln, Nebraska

**Respondent**

**Docket No. TSCA-07-2015-0022**

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Bielenberg Builders, Inc. (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 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 Bielenberg Builders, Inc., a business under the laws of the state of Nebraska.

## **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, 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 per 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces per 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 per 40 C.F.R. § 745.83.

14. The term *person* means 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 per 40 C.F.R. § 745.83.

15. 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82.

16. 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.

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, but are not limited to:

- (a) Pursuant to 40 C.F.R. § 745.85(a)(1), 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;
- (b) 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 surfaces undergoing renovation or a sufficient distance to collect falling pain debris, whichever is greater;
- (c) Pursuant to 40 C.F.R. §745.85(a)(4)(i), firms must contain waste from the renovation to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

18. Pursuant to 40 C.F.R. §745.84(a)(1), firms performing renovations must provide the property owner with the EPA approved lead hazard information pamphlet per the requirements of 40 C.F.R. § 745.84(a)(1).

19. 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).

20. 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 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**

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

22. Respondent is a roofing and siding installation company that was performing renovation, repair, and painting work on target housing.

23. On May 21, 2014, 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 a work site inspection at 3335 W. Lincoln Street in Lincoln, Nebraska, which indicated that Respondent had conducted “renovations”, as defined by 40 C.F.R. § 745.83, at that location (hereinafter, “the Property”).

24. The Property was constructed before 1978.

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

26. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, Respondent failed to comply with some of the requirements of 40 C.F.R. §745.

**Violations**

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

**Count 1**

28. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

29. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(1) by failing to post signs, at the Property, clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area per the requirements of 40 C.F.R. § 745.85(a)(1).

30. 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**

31. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

32. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. §745.85(a)(2)(ii)(C) by failing to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

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 3**

34. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

35. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.85(a)(4)(i) by failing to contain waste from the renovation to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).

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 4**

37. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

38. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. 40 C.F.R. § 745.89(a)(1) and § 745.81(a)(2)(ii) by failing to obtain initial firm certification from EPA as required by 40 C.F.R. § 745.89(a)(1) and § 745.81(a)(2)(ii).

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 5**

40. The facts stated in Paragraphs 21 through 26 above are herein incorporated.

41. At the time of the EPA inspection it was discovered that Respondent failed to comply with 40 C.F.R. § 745.84(a)(1) by failing to provide the property owner with the EPA approved lead hazard information pamphlet per the requirements of 40 C.F.R. § 745.84(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.

## **Section V**

### **Consent Agreement**

43. For purposes of this proceeding, Respondent admits the jurisdictional allegation set forth above.

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

45. 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.

46. 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.

47. 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.

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

49. The effect of settlement described in Paragraph 51 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 47 of this Consent Agreement and Final Order.

50. During pre-filing negotiations, Respondent turned in an Ability to Pay (ATP) Claim. Upon review of the financial information in the Respondent's ATP Claim, EPA finance determined Respondent does not have the ability to pay any portion of the proposed penalty at this time.

51. Respondent agrees that, in settlement of the violations alleged in this CAFO, Respondent shall pay a mitigated penalty of zero dollars (\$0.00) as set forth in Paragraph 1 of the Final Order. 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.

## **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 zero dollars (\$0.00).
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.
4. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
Bielenberg Builders, Inc.

Date: 8/24/2015

By:   
Jeffrey P Bielenberg  
Print Name  
President  
Title

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

Date: 9-9-15

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

Date: 9-8-15

  
Jennifer Trotter  
Office of Regional Counsel

**IT IS SO ORDERED.**

Date: 9-16-15

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

IN THE MATTER OF Bielenberg Builders, Inc., Respondent  
Docket No. TSCA-07-2015-0022

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:

trotter.jennifer@epa.gov

Copy by First Class Mail to:

J. Bielenberg

Bielenberg Builders, Inc.

2550 Wemsha Court

Lincoln, Nebraska 68507

9/16/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7