

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2017 APR 11 AM 8:30

BEFORE THE ADMINISTRATOR

the Matter of:)

Custom Express Renovations, Inc.,)

) Docket No. TSCA-07-2017-0008

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7, and Custom Express Renovations, 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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). Pursuant to Section 16(a)(2)(C), the "Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed [under this subsection]."

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*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

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

4. Respondent is Custom Express Renovations, Inc., a corporation in good standing under the laws of the state of Missouri doing business in the state of Missouri.

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. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standard for renovations that disturb lead-based paint in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The requirements set forth in the regulations at 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R. § 745.82. 40 C.F.R. §§ 745.80(a) and 745.82(a).

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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 40 C.F.R.

§ 745.223. 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.

11. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as 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.

14. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

15. 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 \$38,114 for each violation of Section 409 of TSCA. Each day that such violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689.

General Factual Allegations

16. On or about May 16, 2016, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection of Respondent’s renovation activity records to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (EPA inspection). Records of renovations conducted at multiple properties were reviewed during the EPA inspection, including renovations at 1113 North Main Street; 615 West Charles Street; 8809 East Smart Street; and 805 South Ralston Street in Independence, Missouri (the Properties). A copy of the inspection report was mailed to Respondent on July 8, 2016.

17. Respondent is, and at all times referred to herein was, a corporation doing business in the state of Missouri under the name Custom Express Renovations, Inc.

18. Respondent, at all times referred to herein, was a “person” and “firm” as defined by 40 C.F.R. § 745.83.

19. At all times relevant to the violations alleged in this Consent Agreement and Final Order, Respondent was engaged in “renovation” of the Properties, as defined by 40 C.F.R. § 745.83.

20. At all times relevant to the violations alleged in this Consent Agreement and Final Order, Respondent’s renovations were “renovations for compensation” per 40 C.F.R. § 745.82(a).

21. At all times relevant to the violations alleged in this Consent Agreement and Final Order, the properties were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Properties were built in years ranging from 1900 to 1950.

22. At all times relevant to the violations alleged in this Consent Agreement and Final Order, the Properties were owned and occupied by parties other than Respondent.

23. As a result of the EPA inspection and additional information obtained by the Agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activities at the Properties.

Allegations of Violation

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

Count 1

25. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

26. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for compensation on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. The regulation at 40 C.F.R. § 745.89(a)(1) requires firms that perform renovations for compensation to apply to EPA for certification to perform renovations or dust sampling.

27. The EPA inspection revealed that Respondent had not applied for or obtained certification from the EPA to perform renovations or dust sampling prior to performing renovations on the Properties. Furthermore, the renovations did not qualify for any of the exceptions identified in 40 C.F.R. § 745.82.

28. Respondent's failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

29. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

30. 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.

31. The EPA inspection revealed that Respondent did not assign a certified renovator to the renovation performed at 1113 North Main Street in Independence, Missouri.

32. Respondent's failure to ensure that a certified renovator was assigned to the renovation at 1113 North Main Street is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3 and Count 4

33. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

34. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovation activities in any residential dwelling unit of target housing must provide the owner of the unit with the EPA pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* ("EPA Pamphlet") no more than 60 days before beginning the renovation.

35. The EPA inspection revealed that Respondent did not provide the owners of 615 West Charles Street and 805 South Ralston Street with the EPA Pamphlet before beginning renovation activities on the Property.

36. Respondent's failure to provide the owners of 615 West Charles Street and 805 South Ralston Street with the EPA Pamphlet before beginning renovation activities are violations of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

37. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

38. Pursuant to 40 C.F.R. § 745.84(a)(1)(i), after providing the EPA Pamphlet to the owner of the property, firms performing renovation activities in any residential dwelling unit of target housing must obtain, from the owner, a written acknowledgment that the owner has received the EPA Pamphlet.

39. The EPA inspection revealed that Respondent did not obtain written acknowledgement from the owner of 1113 North Main Street that he had received the EPA Pamphlet.

40. Respondent's failure to obtain written acknowledgement from the owner of 1113 North Main Street that he had received the EPA Pamphlet is a violation of 40 C.F.R. § 745.84(a)(1)(i). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6 through Count 9

41. The facts stated in Paragraphs 16 through 23 above are herein incorporated.

42. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovation. These records shall include, where applicable, the documentation identified in 40 C.F.R. § 745.86(b), including, but not limited to, records or reports certifying that a determination has been made that lead-based paint was not present on components affected by the renovation and documentation of compliance with the work practices required by 40 C.F.R. § 745.85.

43. The EPA inspection revealed that Respondent failed to retain all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovations at 1113 North Main Street, 615 West Charles Street, 8809 East Smart Street, and 805 South Ralston Street in Independence, Missouri, as required by 40 C.F.R. § 745.86(a). Specifically, Respondent did not retain lead-based paint testing documentation and documentation of compliance with lead-safe work practices.

44. Respondent's failure to retain all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovations at 1113 North Main Street, 615 West Charles Street, 8809 East Smart Street, and 805 South Ralston Street are violations of 40 C.F.R. § 745.86(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

45. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) admits to the facts stipulated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;

- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

46. Respondent consents to the issuance of this Consent Agreement and Final Order.

47. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

48. 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 \$3,299.69. This penalty has been adjusted to reflect Respondent's size of business. 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 herein.

Conditions

49. Respondent certifies by the signing of this Consent Agreement and Final Order that it completed EPA-accredited renovator training on December 16, 2016, to become a certified renovator and has received EPA firm certification.

Effect of Settlement and Reservation of Rights

50. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

51. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph directly below.

52. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

53. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

54. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

55. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

56. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

57. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

58. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
CUSTOM EXPRESS RENOVATIONS, INC.

Date: 3/23/17


By: 

Matthew I. Coburn
Print Name

President
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/4/2017



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

Date: 4/4/2017



Jared Passetto
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

April 10, 2017
Date

IN THE MATTER Of Custom Express Renovations, Inc., Respondent
Docket No. TSCA-07-2017-0008

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 via Email to Complainant:

pessetto.jared@epa.gov

Copy via First Class Mail to Respondent:

Matthew I. Coburn
CustomExpress Renovations, Inc.
10516 East 35th Terrace South
Independence, Missouri 64052

Dated: 4/11/17


Kathy Robinson
Hearing Clerk, Region 7