

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2016 SEP 29 AM 11:11

IN THE MATTER OF)

Gateway in Green, LLC)

) Docket No. TSCA-07-2016-0043
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ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 10 of the Complaint, Consent Agreement and Final Order is authorized in this proceeding.

Dated: Sept. 29, 2016

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

2016 SEP 29 AM 11:11

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

In the Matter of)
)
 Gateway in Green, LLC) Docket No. TSCA-07-2016-0043
 3544 Vista Avenue)
 Saint Louis, Missouri 63104)
 Respondent)

COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Gateway in Green, 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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

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 Complaint, 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 Gateway in Green, LLC, a limited liability corporation in good standing under the laws of 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 painted surfaces 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 \$25,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation of Section 409. 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.

General Factual Allegations

16. On or about October 19, 2015, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 37 Lewis Place in St. Louis, Missouri (“the Property”) to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on December 17, 2015.

17. Respondent is, and at all times referred to herein was, a limited liability corporation doing business in the state of Missouri under the name of Gateway in Green, LLC.

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

19. At the time of the EPA inspection, and at all times relevant to this Complaint, Respondent was engaged in a “renovation” of the Property as defined by 40 C.F.R. § 745.83. The EPA inspection revealed that Respondent was actively engaged in extensive renovation and repair of the interior of the Property (“the renovation”), much of which involved painted surfaces, and that Respondent had not tested the affected walls or components for the presence of lead-based paint prior to beginning surface preparation work.

20. At all times relevant to this Complaint, Respondent’s renovation was a “renovation for compensation” per 40 C.F.R. § 745.82(a).

21. At all times relevant to this Complaint, the Property was “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 Property was built in 1906.

22. At all times relevant to this Complaint, Consent Agreement, and Final Order, the Property was owned by a party other than Respondent and was unoccupied.

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 Property.

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 21 through 26 above are herein incorporated.

26. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

27. 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.

28. 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

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 that perform renovations for compensation must assure that a certified renovator is assigned to each renovation performed by the firm.

31. The EPA inspection revealed that Respondent failed to assure that a certified renovator was assigned to this renovation prior to commencing the renovation for compensation on the Property and, as a result, there was no certified renovator assigned to this renovation.

32. Respondent's failure to assure that a certified renovator was assigned to this renovation prior to performance of the renovation on the Property 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

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

34. Pursuant to 40 C.F.R. § 745.84(a)(1), prior to beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with an EPA approved lead hazard information pamphlet.

35. At the time of the EPA inspection it was discovered that Respondent failed to provide the owner of the unit with an EPA approved lead hazard information pamphlet.

36. Respondent's failure to provide the owner of the unit with an EPA approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

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

38. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(1) requires firms to 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.

39. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C.F.R. § 745.85(a)(1).

40. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of the work area is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

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

42. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(B) requires firms to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

43. The EPA inspection revealed that Respondent failed to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

44. Respondent's failure to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

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

46. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(D) requires firms to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

47. The EPA inspection revealed that Respondent failed to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(i)(D).

48. Respondent's failure to cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

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

50. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(i) requires firms to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

51. The EPA inspection revealed that Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal, as required by 40 C.F.R. §745.85(a)(4)(i).

52. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

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

54. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(ii) requires firms at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

55. The EPA inspection revealed that Respondent failed at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that had been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, as required by 40 C.F.R. §745.85(a)(4)(ii).

56. Respondent's failure at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that had been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris is a violation of 40 C.F.R. § 745.85(a)(4)(ii) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

57. Respondent and Complainant agree to the terms of this Consent Agreement and Respondent consents to the issuance of the Final Order.

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

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

60. 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.

61. 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.

Penalty Payment

62. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Zero Dollars (\$0). 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 \$38,680. 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 Complaint, Consent Agreement and Final Order.

Conditions

63. Respondent certifies by the signing of this Complaint, Consent Agreement and Final Order that it received EPA firm certification on August 3, 2016, and is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

Effect of Settlement and Reservation of Rights

64. This settlement 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. Part 745, Subpart E, alleged in this Complaint, Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the TSCA or other applicable law.

65. The effect of settlement described in Paragraph 64 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 63 of this Complaint, Consent Agreement and Final Order.

General Provisions

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

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

68. This Complaint, 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.

RESPONDENT
GATEWAY IN GREEN, LLC

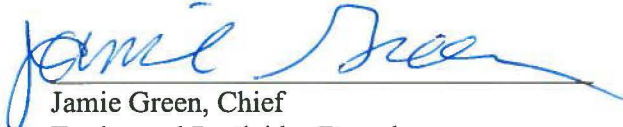
Date: 9-28-16

By: 

Thomas W. McAnally
Print Name

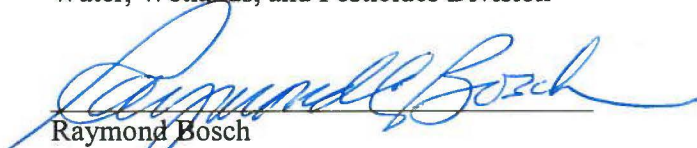
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/28/2016



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

Date: 9/28/2016



Raymond Bosch
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

Sept. 29, 2016
Date

IN THE MATTER Of Gateway in Green, LLC, Respondent
Docket No. TSCA-07-2016-0043

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:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Mr. Tom McAnally, III


Registered Agent

Gateway in Green, LLC

3544 Vista Avenue

Saint Louis, Missouri 63104

Dated: 9/29/16


Kathy Robinson
Hearing Clerk, Region 7