

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

HEARING CLERK

2016 JUN 13 AM 11:23

USEPA REGION 4
OFFICE OF REGIONAL
COUNCIL

In the Matter of:)
)
Overhead Door Co. of Charleston)
)
Respondent.)
_____)

Docket No.: TSCA-04-2016-2511(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) is vested in the Administrator of the United States Environmental Protection Agency. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Director of the Air, Pesticides, and Toxics Management Division, by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. In accordance with 40 C.F.R. § 22.3(a), the Complainant in this matter is the Director of the Air, Pesticides, and Toxics Management Division. Respondent is Overhead Door Co. of Charleston, a company doing business in the State of South Carolina.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Pursuant to Sections 402 and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2682 and 2686, the Administrator of the EPA promulgated Residential Property Renovation Rules at 40 C.F.R. Part 745, Subpart E including the Pre-Renovation Education Rule, the Renovation, Repair and Painting Rule, and the Lead-Based Paint Activities Rule. It is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with any of the rules issued under 40 C.F.R. Part 745, Subpart E.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Ms. Brenda Pressley-Little
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-8231

III. Specific Allegations

5. Respondent is a “firm,” that performs “renovations” for compensation as those terms are defined, by 40 C.F.R. § 745.83. Respondent performed renovation activities at a

residential unit located at: 2300 Palm Blvd., Isle of Palms, South Carolina.

This residential unit is “target housing,” as that term is defined by 40 C.F.R. § 745.103.

6. Based on information provided by Respondent to EPA in a letter dated May 12, 2011, EPA alleges that Respondent violated Sections 402 and 406 of TSCA and 40 C.F.R. Part 745, Subpart E as follows:

Respondent failed to provide the owner or adult occupant of the unit with the EPA approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84 (a).

IV. Consent Agreement

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
8. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the Final Order accompanying the Consent Agreement.
9. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in the Final Order section of this CAFO.
10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart E.
11. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

V. Final Order

12. Respondent is assessed a civil penalty of **ONE THOUSAND NINE HUNDRED EIGHTY EIGHT DOLLARS (\$1,988)** which shall be paid within fifteen (15) days after the effective date of this CAFO.
13. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America."

The Respondent shall note on the face of the check the Respondent's Name and the Docket Number TSCA-04-2016-2511(b).

The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS) (excluding USPS overnight mail):

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

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101.

Contact Phone Number: (314) 425-1818.

14. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960;

Brenda Pressley-Little
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

15. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
16. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, under the Adequate Response Requirement of the CAFO Policy a late payment may require Formal Enforcement Procedures be employed to collect any principal amount not paid within 30 days of the due date.
17. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
18. This CAFO shall be binding upon the Respondent, its successors and assigns.

19. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

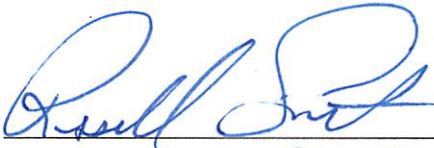
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VI. Effective Date

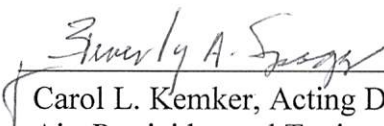
20. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

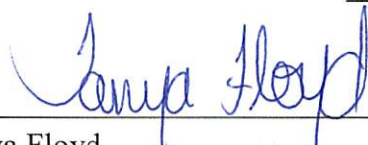
Respondent: Overhead Door Co. of Charleston
Docket No.: TSCA-04-2016-2511(b)

By:  Date: 4/21/16
Name: Russell Smith
Title: SM

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 5/3/16
Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 10th day of June, 20 16

By: 
Tanya Floyd
Regional Judicial Officer

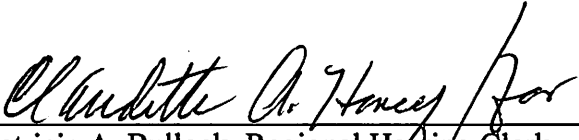
CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Overhead Door Co. of Charleston, Docket Number: TSCA-04-2016-2511(b), to the addressees listed below:

Russell Smith (via Certified Mail, Return Receipt Requested)
Owner
Overhead Door Co. of Charleston
2260 Technical Parkway
North Charleston, South Carolina 29406

Brenda Pressley-Little (via EPA's internal mail)
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

Robert Caplan, Senior Attorney (via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-9511

Date: June 13, 2016