



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 24, 2014

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL 7009 1680 0000 7649 6667
RETURN RECEIPT REQUESTED

Mr. James F. Knibbs
Jim Knibbs Building & Remodeling, Inc.
616 Bay Street
Petoskey, Michigan 49770

Consent Agreement and Final Order in the Matter of
Jim Knibbs Building & Remodeling, Inc. Docket No.

TSCA-05-2014-0012

Dear Mr. Knibbs:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 24, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 81 and 82. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 4, 2014 (within 120 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul Fericelli".

Paul Fericelli
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2014-0012
)
Jim Knibbs Building & Remodeling, Inc.) Proceeding to Assess a Civil Penalty
) Under Section 16(a) of the Toxic Substances
Respondent.) Control Act, 15 U.S.C. § 2615(a)
)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Jim Knibbs Building & Remodeling, Inc. (Respondent), a corporation with a place of business at 616 Bay Street, Petoskey, Michigan 49770.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

that the training programs are accredited and contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair and Painting Program Rule (RRP Rule).

12. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, requiring, among other things, that each person who performs for compensation a renovation of target housing provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. These requirements are known as the Pre-Renovation Education Rule (PRE Rule).

13. 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.

14. 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.

15. 40 C.F.R. § 745.83 defines “renovator” as an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has

target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in 40 C.F.R. § 745.82(a).

21. Under 40 C.F.R. § 745.81(a)(4)(ii), on or after July 6, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(1) and (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in §745.82(a).

22. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation. This includes signed and dated acknowledgements of receipt of the pamphlet by the owner or certificates of mailing of the pamphlet, documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

23. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

24. The Administrator of EPA may assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA that occurred after January 12, 2009, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615, 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

32. All of the residential dwellings identified in Paragraph 26 are “target housing” as defined in 40 C.F.R. § 745.103.

33. The work Respondent performed or directed workers to perform at the residential dwellings identified in Paragraph 26 resulted in the disturbance of painted surfaces.

34. The work Respondent performed or directed workers to perform at the residential dwellings identified in Paragraph 26 was “renovation” as defined at 40 C.F.R. § 745.83.

35. On May 11, 2011, Complainant received an anonymous complaint alleging that Respondent was not in compliance with lead safe work practices required by the RRP Rule and the PRE Rule.

36. On June 17, 2011, Complainant issued a Request for Information requesting, among other things, documents, information and records Respondent is required to maintain pursuant to 40 C.F.R. § 745.86(b)(6), in order to determine Respondent’s compliance with the RRP Rule.

37. On August 8, 2011 Respondent submitted a response to Complainant’s June 17, 2011 Request for Information that contained records and information, some of which were incomplete.

38. On February 2, 2012, and May 24, 2012, Complainant requested additional information from Respondent.

39. On May 25, 2012, Respondent provided Complainant with additional documents responsive to Complainant’s requests.

40. Respondent was required to perform the renovations at the residential dwellings referenced in paragraph 26, above, in accordance with the work practice standards in 40 C.F.R. § 745.85 and the associated recordkeeping requirements in 40 C.F.R. § 745.86(b).

Mitchell Street, Petoskey, Michigan, 1804 Terrace Avenue, Petoskey, Michigan, as verification that the pamphlet was received by the owners no more than 60 days before beginning renovation activities constitutes three violations of 40 C.F.R. §§ 745.86(b)(2) and 15 U.S.C. § 2689.

Counts 4-5

48. Complainant incorporates paragraphs 1 through 47 of this CAFO as if set forth in this paragraph.

49. 40 C.F.R. § 745.86(b)(2) requires that the records firms must retain pursuant to 40 C.F.R. § 745.86(a) include signed and dated acknowledgments of receipt of the pamphlet by the owner of the residential dwelling no more than 60 days before beginning renovation activities.

50. Respondent retained a signed and dated acknowledgment of receipt of the pamphlet by the owner of the residential dwelling at 712 Grand Ave., Petoskey, Michigan, but the acknowledgement was dated after the renovation activity began.

51. Respondent retained a signed and dated acknowledgment of receipt of the pamphlet by the owner of the residential dwelling at 611 East Lake Street, Petoskey, Michigan, but the acknowledgement was dated after the renovation activity began.

52. Respondent's failure to retain acknowledgments of receipt of the pamphlet by the owners of the residential dwellings at 712 Grand Ave., Petoskey, Michigan, and 611 East Lake Street, Petoskey, Michigan, signed and dated no more than 60 days before beginning renovation activities constitutes two violations of 40 C.F.R. §§ 745.86(b)(2) and 15 U.S.C. § 2689.

60. Respondent's failure to retain and provide documentation of compliance with the work practice standards requirements of 40 C.F.R. § 745.85, including certifications by the certified renovator assigned to the projects that warning signs were posted at entrances to the work areas, for the renovations at 712 Grand Ave., Petoskey, Michigan; 412 East Dixon Avenue, Charlevoix, Michigan; 611 East Lake Street, Petoskey, Michigan; 820 East Mitchell Street, Petoskey, Michigan; and 1804 Terrace Ave., Petoskey, Michigan, constitutes five violations of 40 C.F.R. § 745.86(b)(6)(ii) and 15 U.S.C. § 2689.

Counts 11-13

61. Complainant incorporates paragraphs 1 through 60 of this CAFO as if set forth in this paragraph.

62. 40 C.F.R. § 745.86(b)(6)(iv)(F) requires the records that must be retained pursuant to 40 C.F.R. § 745.86(a) include documentation of compliance with the work practice standards requirements of 40 C.F.R. § 745.85, including a certification by the certified renovator assigned to the project that the work area was contained by covering the floor surface (interiors) or ground (exteriors).

63. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that the work area was contained by covering the floor surface (interiors) or ground (exteriors) for the renovation at 712 Grand Ave., Petoskey, Michigan.

64. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that the work area was contained by covering the floor surface (interiors) or ground (exteriors) for the renovation at 611 East Lake Street, Petoskey, Michigan.

70. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that he or she performed the post-renovation cleaning verification, including a brief description of the results, for the renovation at 412 East Dixon Avenue, Charlevoix, Michigan.

71. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that he or she performed the post-renovation cleaning verification, including a brief description of the results, for the renovation at 611 East Lake Street, Petoskey, Michigan.

72. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that he or she performed the post-renovation cleaning verification, including a brief description of the results, for the renovation at 820 East Mitchell Street, Petoskey, Michigan.

73. Respondent failed to retain and provide a certification by the certified renovator assigned to the project that he or she performed the post-renovation cleaning verification, including a brief description of the results, for the renovation at 1804 Terrace Ave., Petoskey, Michigan.

74. Respondent's failure to retain and provide documentation of compliance with the work practice standards requirements of 40 C.F.R. § 745.85, including certifications by the certified renovators assigned to the projects that they performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) (the results of which must be briefly described, including the number of wet and dry cloths used), for the renovations at 712 Grand Ave., Petoskey, Michigan; 412 East Dixon Avenue, Charlevoix, Michigan; 611 East Lake Street, Petoskey, Michigan; 820 East Mitchell Street, Petoskey, Michigan; and 1804 Terrace Ave.,

cloths or mops, for the renovation at the 820 East Mitchell Street, Petoskey, Michigan; and 1804 Terrace Ave., constitutes two violations of 40 C.P.R. § 745.86(b)(6)(vi)(B) and 15 U.S.C. § 2689.

Proposed Civil Penalty

80. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), based on the factors listed in 15 U.S.C. § 2615(a)(2)(B), particularly Respondent's ability to pay a penalty, Complainant has determined, based on certain financial documentation provided by the Respondent, that Respondent has the ability to pay \$1,000 as a civil penalty for the violations alleged in this CAFO. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

81. Within 30 days after the effective date of this CAFO, Respondent must pay the \$1,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note the following: the case title ("In the Matter of Jim Knibbs Building & Remodeling, Inc."), the docket number of this CAFO, and the billing document number.

82. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment in Paragraph 81. Respondent must send a copy of the check and transmittal letter to:

General Provisions

86. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

87. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

88. This CAFO does not affect Respondent's responsibility to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and other applicable federal, state, and local laws.

89. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

90. The terms of this CAFO bind Respondent, its successors and assigns.

91. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

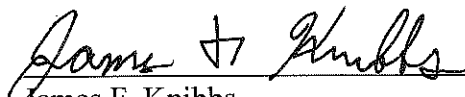
92. Each party agrees to bear its own costs and attorney fees in this action.

93. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Jim Knibbs Building & Remodeling, Inc.
Docket No. TSCA-05-2014-0012


Jim Knibbs Building & Remodeling, Inc., Respondent

MAY 8 2014
Date


James F. Knibbs
Registered Agent

U.S. Environmental Protection Agency, Complainant

6/12/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: Jim Knibbs Building & Remodeling, Inc.
Docket No. TSCA-05-2014-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-23-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Jim Knibbs Building and Remodeling, Inc., was filed on June 24, 2014, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7649 6667 to:

Mr. James F. Knibbs
Jim Knibbs Building & Remodeling, Inc.
616 Bay Street
Petoskey, Michigan 49770

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jose C de Leon, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2014-0012