

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 or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

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, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$37,500 for violations that occurred after January 12, 2009. Congress amended TSCA in June 2016, increasing the statutory maximum penalty to \$37,500. P.L. No: 114-182. Most recently, the 2017 Civil Monetary Penalty Inflation Adjustment Rule, 82 Fed. Reg. 3633 (Jan. 12, 2017), promulgated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, increased these statutory maximum penalties to \$38,114 for violations that occur after November 2, 2015.

General Factual Allegations

16. On or about July 13, 2016, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 708 North Chestnut in Wahoo, Nebraska 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 August 24, 2016.

17. Respondent, at all times referred to herein, was a domestic LLC doing business in the state of Nebraska under the name Second Chance Dustless Blasting, 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 Consent Agreement and Final Order, Respondent had been engaged in a “renovation” of each of the following properties (“Properties”) as defined by 40 C.F.R. § 745.83:

- a. 962 North Orange Street, Wahoo, Nebraska 68066 (“962 North Orange Street”);
- b. 1030 North Sycamore Street, Wahoo, Nebraska 68066 (“1030 North Sycamore Street”);
- c. 1169 Desney Avenue, Wahoo, Nebraska 68066 (“1169 Desney Avenue”); and
- d. 1136 Desney Avenue, Wahoo, Nebraska 68066 (“1136 Desney Avenue”).

20. The EPA inspection revealed that Respondent had conducted paint stripping from the exterior of the house including window trim and siding at 962 North Orange Street in or about August 2015 (“962 North Orange Street renovation”).

21. The EPA inspection revealed that Respondent had conducted paint stripping from the exterior of the house including window trim and siding at 1030 North Sycamore Street in or about September 2015 (“1030 North Sycamore Street renovation”).

22. The EPA inspection revealed that Respondent had conducted paint stripping from the exterior of the house including window trim and siding at 1169 Desney Avenue in or about October 2015 (“1169 Desney Avenue renovation”).

23. The EPA inspection revealed that Respondent had conducted paint stripping from the exterior of the house including window trim and siding at 1136 Desney Avenue in or about October 2015 (“1136 Desney Avenue renovation”).

24. The aforesaid four renovations are collectively referred to as “renovations.”

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

26. At all times relevant to 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 dwelling at 962 North Orange Street

was built in 1922; the dwelling at 1030 North Sycamore Street was built in 1918; the dwelling at 1169 Desney Avenue was built in 1941; and the dwelling at 1136 Desney Avenue was built in 1941.

27. At all times relevant to this Consent Agreement and Final Order, the dwelling at 962 North Orange Street was owned by a party other than Respondent and occupied.

28. At all times relevant to this Consent Agreement and Final Order, the dwelling at 1030 North Sycamore was owned by a party other than Respondent and occupied.

29. At all times relevant to this Consent Agreement and Final Order, the dwelling at 1169 Desney Avenue was owned by a party other than Respondent and unoccupied.

30. At all times relevant to this Consent Agreement and Final Order, the dwelling at 1136 Desney Avenue was owned by a party other than Respondent and occupied.

31. 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

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

Count 1

33. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

34. 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.

35. The EPA inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovations for compensation on the Properties.

36. 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 renovations on the Properties 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.

Counts 2-5

37. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

38. Pursuant to 40 C.F.R. § 745.84(a)(1), firms that perform renovations for compensation, prior to beginning the renovation, must provide to the owner of the unit the EPA-approved lead hazard information pamphlet.

39. The EPA inspection revealed that Respondent failed to provide the owner of 962 North Orange Street, 1030 North Sycamore Street, 1169 Desney Avenue, and 1136 Desney Avenue with the EPA-approved pamphlet prior to beginning the renovations.

40. Respondent's failures to provide to the owner of each of the Properties the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1) prior to performance of the renovations on the Properties are four separate violations of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

41. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

42. Pursuant to 40 C.F.R. § 745.84(a)(2), firms that perform renovations for compensation, prior to beginning the renovation, must provide to an adult occupant of the unit the EPA-approved lead hazard information pamphlet.

43. The EPA inspection revealed that Respondent failed to provide to an adult occupant of 1136 Desney Avenue with the EPA-approved pamphlet prior to beginning the renovations.

44. Respondent's failure to provide to an adult occupant of 1136 Desney Avenue the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(2) prior to performance of the 1136 Desney Avenue renovation is a violation of 40 C.F.R. § 745.84(a)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 7-10

45. Pursuant to 40 C.F.R. § 745.86(a) and (b), firms that perform renovations for compensation must retain records needed to demonstrate compliance with 40 C.F.R. § 745, Subpart E. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(4)(ii) requires that all renovations must be performed in accordance with the recordkeeping requirements of 40 C.F.R. § 745.86(b)(1) and (b)(6).

46. The EPA inspection revealed that Respondent failed to retain records needed to demonstrate compliance with 40 C.F.R. § 745, Subpart E for the renovations at 962 North Orange Street, 1030 North Sycamore Street, 1169 Desney Avenue, and 1136 Desney Avenue.

47. Respondent's failures to retain records needed to demonstrate compliance with 40 C.F.R. § 745, Subpart E for each of the Properties pursuant to 40 C.F.R. § 745.86(a) are four separate violations of 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 11

48. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

49. 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.

50. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C.F.R. § 745.85(a)(1) during the 962 North Orange Street renovation.

51. 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 during the 962 North Orange Street renovation 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 12

52. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

53. 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)(ii)(C) requires firms before beginning the renovation, to 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 paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

54. The EPA inspection revealed that Respondent failed to completely 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 paint debris as required by 40 C.F.R. § 745.85(a)(2)(ii)(C), during the 962 North Orange Street renovation.

55. Respondent's failure to completely cover the ground pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C) during the 962 North Orange Street renovation is a violation of 40 C.F.R. § 745.85(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 13-14

56. The facts stated in Paragraphs 16 through 31 above are herein incorporated.

57. 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)(3)(ii) prohibits the use of machines that remove paint through high speed operation such a sanding, grinding, power planning, or sandblasting, unless such machines are used with HEPA exhaust control.

58. The EPA inspection revealed that Respondent used a machine to remove paint through high speed operation such a sanding, grinding, power planning, or sandblasting, without HEPA exhaust control as required by 40 C.F.R. § 745.85(a)(3)(ii), during the 962 North Orange Street and 1030 North Sycamore Street renovations.

59. Respondent's failure to use such exhaust control pursuant to 40 C.F.R. § 745.85(a)(3)(ii) during the 962 North Orange Street and 1030 North Sycamore Street renovations are two separate violations of 40 C.F.R. § 745.85(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

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

- (a) neither admits nor denies the specific factual allegations stated above;
- (b) consents to the assessment of a civil penalty as stated below;
- (c) consents to the issuance of any specified compliance or corrective action order;
- (d) consents to any conditions specified in this Agreement;
- (e) consents to any stated Permit Action;
- (f) waives any right to contest the alleged violations of law set forth in this Consent Agreement; and
- (g) waives its rights to appeal the Order accompanying this Agreement.

61. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

62. 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

63. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a civil penalty of one-thousand two hundred dollars (\$1,200.00). The penalty has been adjusted to reflect Respondent's size of business.

64. Respondent shall pay the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

65. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Britt Bieri, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

66. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

67. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for the violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

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

69. Respondent certifies that by the signing of this Consent Agreement that it no longer conducts renovations on target housing, but that if it conducts any future renovations on target housing at any time following the entry of this Consent Agreement and Final Order, it will comply with all requirements of TSCA and its implementing regulations.

70. Full payment of the penalty proposed in this CAFO 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 CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

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

General Provisions

72. 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.

73. 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.

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

75. 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

Second Chance Dustless Blasting, LLC

Date: 12-6-17

By: 


Michael L. Beckman
Print Name

PARTNER OF LLC
Title

COMPLAINANT


U. S. Environmental Protection Agency

Date: 12/12/2017



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

Date: 12/12/17



Britt Bieri
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

Dec. 12, 2017

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

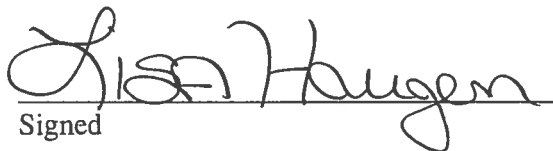
Copy via Email to Complainant:

bieri.britt@epa.gov

Copy via first class mail to:

Mike Beckman
Second Chance Dustless Blasting, LLC
708 N. Chestnut Street
Wahoo, Nebraska 68066

Dated this 12 day of December, 2017.


Signed