

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
AGENCY-REGION 7

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

2015 NOV 17 PM 1:29

BEFORE THE ADMINISTRATOR

In the Matter of

**American Indian Environment & Health
Association
d/b/a AIEHA**

Docket No. TSCA-07-2015-0101

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and **American Indian Environment and Health Association, d/b/a AIEHA**, 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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).
2. This Consent Agreement and Final Order (CAFO) 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 L, *Lead-*

Based Paint Activities Requirements, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Section II

Parties

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

4. The Respondent is American Indian Environment and Health Association, d/b/a AIEHA, ('AIEHA'), a nonprofit business in good standing under the laws of the state of Kansas.

Section III

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. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. On June 1, 1998, EPA promulgated procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations and certification of individuals and firms engaged in lead-based paint activities and work practice standards in performing such activities, codified at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*, (the Training Provider Rule) pursuant to 15 U.S.C. § 2682. On April 22, 2008, EPA amended and re-codified the Training Provider Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, *Lead-Based Paint Renovation, Repair and Painting Rule* (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686 and 2687. The regulations aimed to protect the public from lead-based

paint hazards associated with renovation, repair and painting activities under the Training Provider Rule.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. EPA promulgated regulations regarding lead-based paint activities, including those who provide training for others who will perform renovation of residences built prior to 1978. These regulations are found within 40 C.F.R. Part 745, Subpart L.

9. The term *training provider* means any organization or entity accredited under 40 C.F.R. § 745.225 to offer lead-based paint activity courses. 40 C.F.R. § 745.223.

10. The term *accredited training program* means a training program that has been accredited by EPA pursuant to 40 C.F.R. § 745.225 to provide training for individuals engaged in lead-based paint activities. 40 C.F.R. § 745.223.

11. The term *training manager* means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors. 40 C.F.R. § 745.223.

12. The term *training provider* means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

13. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart L (Training Provider Rule) violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

14. 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. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. 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.

Section IV

General Factual Allegations

15. Respondent is, and at all times referred to herein was, a ‘person’ and a ‘training provider’ as defined in 40 C.F.R. § 745.223.

16. Respondent acted as Training Provider during ‘Initial Renovator Training’ sessions held on January 25, 2013 and on May 11, 2013.

17. On February 21, 2014, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the United States Environmental Protection Agency, Region 7 conducted a record keeping inspection of AIEHA’s records to determine compliance with the Lead-Based Paint Activities Rule.

18. The EPA inspection found that the Respondent had failed to notify EPA of the planned training activities as required per 40 C.F.R. 745.225(c).

Violations

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

Counts 1 and 2

20. The facts stated in Paragraphs 15 through 18 above are herein incorporated.

21. At the time of the EPA inspection, it was discovered that Respondent failed to notify EPA of all lead-based activities courses offered at least 7 business days prior to the start date of any lead-based pain activities course, which is a violation of 40 C.F.R. § 745.225(c)(13)(i).

22. 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.

Section V

Consent Agreement

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

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

25. 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.

26. Respondent and EPA agree to mitigate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

27. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

28. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart L.

29. The effect of settlement described in the following paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the immediately preceding Paragraph of this CAFO.

30. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of One Thousand Eight Hundred and Forty Eight Dollars (\$1,848.00) as set forth in Paragraph 1 of the Final Order. Payment of this mitigated civil penalty in full 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. Subpart L alleged in this document.

31. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 41 above 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of One Thousand Eight Hundred and Forty Eight Dollars (\$1,848.00) within thirty (30) days of the effective date of this 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:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
'D 68010727 Environmental Protection Agency'

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

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

Cassandra Mance
WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

This CAFO 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

American Indian Environment & Health Association
d/b/a AIEHA


Date: 11-6-2015

By: 
Brad Mayhew
for AIEHA *Board Member*

COMPLAINANT

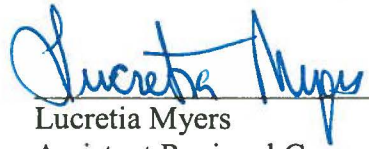
U. S. Environmental Protection Agency

Date: 11/10/2015



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

Date: 11/16/15



Lucretia Myers
Assistant Regional Counsel
Office of Regional Counsel

IN THE MATTER OF American Indian Environment & Health Association d/b/a AIEHA
Docket No. TSCA-07-2015-0101

IT IS SO ORDERED. This Order shall become effective immediately.

Date: 11-17-15

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF American Indian Environment & Health Association
d/b/a AIEHA, Respondent
Docket No. TSCA-07-2015-0101

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 by email to Attorney for Complainant:

myers.lucetia@epa.gov

Copy by First Class Mail to:

American Indian Environment & Health Association
Attn: Brad Mayhew
2200 W 25th Street
Lawrence, Kansas 66047

Dated: 11/17/15



Kathy Robinson
Hearing Clerk, Region 7