

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

2013 SEP 26 PM 12:13

In the Matter of:

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) Docket No. TSCA- 07-2013-0027
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Exterior Energy Consultants, Inc.
6409 North Oak Trafficway
Gladstone, Missouri 64118

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Exterior Energy Consultants, Inc. (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, 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 E (Renovation Repair and Painting Rule a/k/a “RRP” Rule), which were authorized for promulgation by Section 402 of TSCA, 15 U.S.C. § 2682.

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 Exterior Energy Consultants, Inc., a corporation in good standing under the laws of the state of Missouri and is authorized to do business in the state of Missouri. The Respondent meets the definition of a “Firm” and of a “Person,” as those terms are set forth in 40 C.F.R. § 745.83.

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 Subchapter IV-Lead Exposure Reduction, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 401(17) of TSCA, 15 U.S.C. § 2681(17) defines target housing to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

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 has promulgated regulations regarding lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. Part 745, Subpart E (RRP Rule), and were promulgated pursuant to 15 U.S.C. § 2682.

9. The regulation at 40 C.F.R. § 745.83 defines renovation to mean 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.

10. The regulation at 40 C.F.R. § 745.85 sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. Among these are:

- a. 40 C.F.R. § 745.85(a)(5) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

11. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP 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).

12. 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**

13. Respondent is a “renovator” who performed “renovations” as defined by 40 C.F.R. § 745.83 for compensation.

14. On or about November 30, 2010, Respondent signed a contract to perform renovations on the property located at 1212 NE 33rd Terrace in Kansas City, Missouri. This property was constructed before 1978.

15. The property listed in Paragraph 14 above is “target housing” as defined by 40 C.F.R. § 745.103.

Section V
Violations

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

Count I

17. The facts stated in Paragraphs 13 through 15 above are herein incorporated.

18. Respondent failed to clean the work area until no dust, debris or residue remained after its renovation of the property located at 1212 NE 33rd Terrace in Kansas City, Missouri, had been completed, in violation of 40 C.F.R. § 745.85(a)(5).

19. Respondent’s failure to perform the act indicated 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 VI
Consent Agreement

20. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
21. Respondent neither admits nor denies the factual allegations set forth above.
22. 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.
23. 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.
24. Respondent certifies by the signing of this CAFO that to the best of its knowledge it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E, and agrees that the effect of this settlement is conditioned upon the accuracy of this representation to EPA.
25. 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.
26. Payment of this 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 E alleged in this document.
27. In settlement of this matter, the Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

Abatement of lead-based paint at target housing by and through a certified lead abatement contractor at the cost of not less than Fifteen Thousand Five Hundred Forty-Three Dollars (\$15,543) for the replacement of twenty-two (22) windows in accordance with the federal lead-based paint abatement regulations (Respondent has provided bid estimate for the work in the amount of \$16,925). The abatement work shall be performed at 1029 Bennington, Kansas City, Missouri. In accordance with Missouri state regulations, following the completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

28. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to Missouri Department of Health and Senior Services informing the state of Respondent's intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

29. The total expenditure for the SEP shall be not less than Fifteen Thousand Five Hundred Forty-Three Dollars (\$15,543) and the SEP shall be completed no later than 120 days from effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state and local laws and regulations.

30. Respondent agrees that the abatement work on the SEP referenced in Paragraph 27 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 27 above receive a copy of this CAFO and all attachments pertaining to the SEP. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

31. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- c. The final abatement report, as required by state law; and
- d. The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

As to the EPA:

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

As to the state:

~~Brandon Rekus~~ *Chris Silva*
Missouri Department of Health and Senior Services
930 Wildwood
Jefferson City, Missouri 65109.

32. Respondent agrees to the payment of stipulated penalties as follows:
- a. In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Fifteen Thousand Five Hundred Forty-Three Dollars (\$15,543).
 - ii. If the SEP is satisfactorily completed, but the Respondent spends less than Fifteen Thousand Five Hundred Forty-Three Dollars (\$15,543) on the SEP, Respondent shall pay as a stipulated penalty to the United States the amount of Fifteen Thousand Five Hundred Forty-Three Dollars (\$15,543) minus the amount that Respondent can demonstrate it spent upon the satisfactorily completed SEP.
 - b. If Respondent fails to timely and completely submit the SEP Completion Report required by this CAFO, EPA may consider the SEP to not be satisfactorily completed and Respondent may become subject to the stipulated penalty above.

- c. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP.
- d. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other resolution under this CAFO.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 1 of the Final Order portion of this CAFO.

33. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

34. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily

ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

35. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

36. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency.”

37. 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 32 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 VII
Final Order

Pursuant to the provisions of 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 civil penalty of One-Thousand Seven Hundred Twenty-Seven Dollars (\$1,727). The payment shall be made at the address below. The payment shall identify Respondent by name and docket number (TSCA-07-2013-0027) 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
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Robert Richards, Attorney
Office of Regional Counsel
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.


RESPONDENT
EXTERIOR ENERGY CONSULTANTS, INC

Date: 9-23-2013

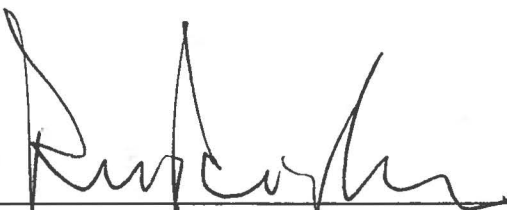
by Tomoko Blackler
President
TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/26/13

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

Date: 9/26/13

By: 
Robert Richards
Attorney
Office of Regional Counsel

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

Date: 9-26-13

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

IN THE MATTER OF Exterior Energy Consultants, Inc., Respondent
Docket No. TSCA-07-2013-0027

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:

richards.robert@epa.gov

Copy by First Class Mail to Respondent:

Timothy K. Blackburn
President
Exterior Energy Consultants, Inc.
6409 North Oak Trafficway
Gladstone, Missouri 64118

Dated: 9/26/13



Kathy Robinson
Hearing Clerk, Region 7