

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66101
BEFORE THE ADMINISTRATOR

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2013 JUN 13 AM 8:08

In the Matter of:

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) Docket No. TSCA-07-2013-0013
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Patrick Regan
1423 North 2nd Street
Atchison, KS 66002

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and 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 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 F, promulgated pursuant

to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

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 Patrick Regan, an individual.

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. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any

purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Section IV

General Factual Allegations

6. Respondent is, and at all times referred to herein was a “person” within the meaning of TSCA.

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of 1329 Commercial Street, Atchison, Kansas (the Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

10. On October 24, 2011, EPA conducted an evaluation of Respondent’s compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondents as part of that evaluation. Based upon that evaluation, the Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as set forth below.

Violations

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

Count 1

12. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

13. On or about June 1, 2010, Respondent entered into a contract to lease the Property, a target housing unit built prior to 1978, located at 1329 Commercial Street, Atchison,

Kansas.

14. Respondent failed to provide the lessees of the Property described in this count with an EPA-approved lead hazard information pamphlet before lessees became obligated under contract to lease the Property.

15. Respondent's failure to perform the acts indicated in paragraph 14 above is a violation of 40 C.F.R. §§ 745.107(a), and in accordance with 40 C.F.R. § 745.118(e), is a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and 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.

Consent Agreement

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

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

18. Respondent has the right to contest any issue of fact or law set forth above and has the right to appeal the Final Order accompanying this Consent Agreement.

19. 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.

20. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745.

21. 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.

22. The effect of this settlement described is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in this Consent Agreement and Final

Order.

23. 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 F alleged in this document.

24. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and public health benefits:

Renovate the "Target Housing" located at 1134 Laramie Street, Atchison, Kansas, as set forth in Attachment 1 to this Consent Agreement and Final Order. All work shall be done in accordance with all laws and regulations of the state of Kansas and the United States of America.

25. The total expenditure for the SEP shall be not less than Four Thousand Four Hundred Sixty-Three Dollars (\$4,463) 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.

26. Within thirty (30) days of the effective date of the Final Order, and prior to beginning work on the SEP, Respondent shall send a notice to the Kansas Department of Health and the Environment, at the contact listed in paragraph 27 below, informing the state of Kansas of Respondent's intent to perform this SEP. A copy of this letter shall be sent to EPA at the contact listed in paragraph 27.

27. 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:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks; and

(iii) The following certification signed by Respondent:

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 EPA:

Candace Bias
U.S. Environmental Protection Agency, Region 7
Toxics and Pesticides Branch
Water, Wetlands and Pesticide Division
11201 Renner Boulevard
Lenexa, KS 66219.

As to the state:

Thomas Langer, MPA
Director, Bureau of Environmental Health
Kansas Department of Health & Environment
1000 SW Jackson Suite #330
Topeka, KS 66612

28. 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:

(1) 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 Four Thousand Four Hundred Sixty-Three Dollars (\$4,463).

(2) If the SEP is satisfactorily completed, but the Respondent spends less than Four Thousand Four Hundred Sixty-Three Dollars (\$4,463) on the SEP, Respondent shall pay as a stipulated penalty to the United States the amount of Four Thousand Four Hundred Sixty-Three Dollars (\$4,463) 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, Respondent shall be liable for and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100.00) for each day after the due date until a complete report is submitted.

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 the Final Order portion of this Consent Agreement and Final Order.

29. Respondent certifies that he 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 he has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

30. Respondent further certifies that, to the best of his 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.

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

32. 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."

33. 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 described in this Consent Agreement and Final Order 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 civil penalty of One Thousand Four Hundred Eighty-Seven Dollars (\$1,487) within sixty (60) 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 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, NY 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, KS 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

RESPONDENT:

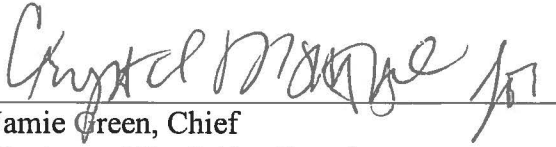
Date: 6-6-13



Patrick Regan

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 12, 2013



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

Date: June 11, 2013



Raymond C. Bosch
Office of Regional Counsel

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

Date: 6-12-2013

Karina Borromeo

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

Proposal

FROM

Ray Pettengill Construction

12422 Carr Rd.
La Porte City, IA 50651
(319) 342-3550

Proposal No.

Sheet No.

Date 10-19-12

Proposal Submitted To

Work To Be Performed At

Name Jay Hewitt
Street 1640 S Center
City Muskegon town IA
State IA
Telephone Number 641 750 0510 - 641 751 3269

Street Main St Rental
City Muskegon town State IA

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of

Replace windows in rental property all
Double Hung windows white low E, 2 screen
11 - 34 x 66 DH
11 - 30 x 62 DH
1 - 27 1/2 x 54 DH
1 - 24 x 45 1/2 DH
1 - 40 x 62 DH

All material is guaranteed to be specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Dollars (\$ 32,000.00)

with payments to be made as follows:

1/2 pd when windows are ordered balance when
windows are installed

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by _____

Respectfully submitted Ray Pettengill

Per _____

Note --- Customer has three day right to rescind. This contract valid after three days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Accepted _____ Sign _____

Date _____ Signature _____

IN THE MATTER OF Patrick Regan, Respondent
Docket No. TSCA-07-2013-0013

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:

bosch.raymond@epa.gov

Copy by First Class Mail to Respondent:

Patrick Regan
1423 North 2nd Street
Atchison, Kansas 66002

Dated: 6/13/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7