



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2014 JAN 28 AM 10: 57

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2014-0002

IN THE MATTER OF:	)	
	)	
THOMAS BREUER CONSTRUCTION INC.	)	FINAL ORDER
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. §22.13(b), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 28<sup>th</sup> DAY OF January, 2014.

  
 \_\_\_\_\_  
 Elyana R. Supin  
 Regional Judicial Officer

2014 JAN 28 AM 10:57

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
Thomas Breuer Construction, Inc. )  
7301 E. Palomino Road )  
Sioux Falls, SD 57110, )  
)  
Respondent. )

COMBINED COMPLAINT AND  
CONSENT AGREEMENT

DOCKET NO. : TSCA-08-2014-0002

Complainant, the United States Environmental Protection Agency (EPA), Region 8, and Respondent, Thomas Breuer Construction, Inc., (Respondent) (together, the Parties) by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY MATTERS

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act (Residential Lead Hazard Act), 42 U.S.C. § 4851 et seq., and the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.
2. EPA regulations authorized by the statutes are set out in part 745, subpart E of title 40 of the Code of Federal Regulations (C.F.R) and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA, 15 U.S.C. § 2615.
3. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (Rules of Practice), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (Agreement), intended to simultaneously commence and conclude this matter is authorized by the Rules of Practice, 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.
4. The Respondent is a "firm" and a "renovator" as the terms are defined in 40 C.F.R. § 745.83.
5. The Respondent conducted residential renovation at a property located at 2211 South Pendar Lane, Sioux Falls, South Dakota, (Jobsite) during August 2013.
6. On August 29, 2013, an authorized representative of the EPA conducted a compliance inspection at the Respondent's Jobsite to determine compliance with the Renovation, Repair, and Painting (RRP) Rule 15 U.S.C. § 2682, 40 C.F.R part 745 Subpart E.
7. The Jobsite is a residential housing property constructed prior to 1978.
8. The alleged violations are described in paragraphs 9-12.

9. EPA found that Respondent failed to obtain the required initial certification from the EPA under 40 C.F.R. § 745.89(a) prior to performing a renovation on housing constructed prior to 1978. This is a violation of the RRP Rule, specifically, 40 C.F.R. § 745.81.
10. EPA found that Respondent failed to retain all records necessary to demonstrate compliance with the residential property regulations for a period of 3 years. This is a violation of the RRP Rule, specifically, 40 C.F.R. § 745.86.
11. EPA found that Respondent failed to document delivery of the EPA-approved lead hazard information pamphlet to the property owner of the Jobsite prior to commencing its renovation activities. This is a violation of the RRP Rule, specifically, 40 C.F.R. § 745.84.
12. EPA found that Respondent failed to post signs clearly defining the work area and warning occupants and other person not involved in renovation activities to remain outside the work area. This is a violation of the RRP Rule, specifically 40 C.F.R. § 745.84.
13. Respondent's failure to comply with 40 C.F.R. §§ 745.81, 745.86, 745.84 are violations of Section 402 of TSCA, 15 U.S.C. § 2682.

## II. TERMS OF SETTLEMENT

14. To determine the amount of the civil penalty to be assessed, EPA considered, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of TSCA, or lack thereof, and degree of culpability.
15. In consideration of the facts and circumstances of this matter, the Parties agree to enter into this Agreement in order to settle the violations referenced in paragraphs 9-12 above for the penalty amount of **\$6,000 (six thousand dollars)**. Payment shall be made in six installments of **\$1000 (one thousand dollars)** per installment every 30 calendar days in accordance with the attached document (Attachment A) entitled *Instructions for Making a Payment*.
16. In signing this Agreement, Respondent: (1) admits that Respondent was subject to the RRP requirements (40 C.F.R. § 745 subpart E) at the time the work described herein was being conducted; (2) admits the jurisdictional allegations made herein; (3) neither admits nor denies the factual allegations contained herein; and (4) consents to the assessment of the penalty specified in this Agreement.
17. Upon the effective date of the Agreement, full payment of the civil penalty shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

18. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
19. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing, including but not limited to the right to contest the allegations contained herein, and to appeal this Agreement.
20. Each party shall bear its own costs and attorney fees, if any.
21. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Agreement and to bind the Respondent to the terms and conditions of this Agreement.
22. The Parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.


### III. GENERAL PROVISIONS

23. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Agreement contains all terms of the settlement agreed to by the Parties.
24. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
25. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.
26. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

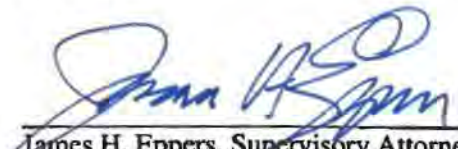
**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,**

**Complainant**

Date: 1/27/2014

By:   
Cheryl Turcotte, Supervisor  
Toxics Enforcement Unit  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-AT)  
U.S. Environmental Protection Agency,  
Region 8


Date: 1/27/2014

By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-L)  
U.S. Environmental Protection Agency,  
Region 8

**Thomas Breuer Construction, Inc,**

**Respondent**

Date: 1/16/2014

By:   
Name: THOMAS D. BREUER  
Title: PRESIDENT

**INSTRUCTIONS FOR MAKING A PAYMENT**

Payment in the amount of **\$6000 (six thousand dollars)** shall be paid in six installments of **\$1000 (one thousand dollars)** per installment, and the first installment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day. The second installment of **\$1000 (one thousand dollars)** is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. The third installment of **\$1000 (one thousand dollars)** is due within 90 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. The fourth installment of **\$1000 (one thousand dollars)** is due within 120 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. The fifth installment of **\$1000 (one thousand dollars)** is due within 150 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. The sixth installment of **\$1000 (one thousand dollars)** is due within 180 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed on day 211 from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 210 days of the due date (that is, on day 241 after the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

Each payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

**REGULAR MAIL:**

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

**WIRE TRANSFERS:**

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 "

**FEDERAL EXPRESS, AIRBORNE, OR OTHER COMMERCIAL CARRIER:**

US Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**ACH TRANSACTIONS (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

[WWW.PAY.GOV](http://WWW.PAY.GOV)  
(Enter sfo 1.1 in the search field  
Open form and complete required fields.)

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

Tina Artemis  
Regional Hearing Clerk  
Mail Code 8RC  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Alexas Gilbert  
RRP Enforcement Coordinator  
Mail Code 8ENF-AT  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT and FINAL ORDER** in the matter of **THOMAS BREUER CONSTRUCTION, INC.; DOCKET NO.: TSCA-08-2014-0001** was filed with the Regional Hearing Clerk on January 28, 2014.

Further, the undersigned certifies that a true and correct copy of the documents were delivered via email to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail to:

Thomas Breuer, Owner  
Thomas Breuer Construction, Inc.  
7301 E. Palomino Road  
Sioux Falls, SD 57110

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

January 28, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk

