

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

**11201 RENNER BOULEVARD
LENEXA, KANSAS 66101
BEFORE THE ADMINISTRATOR**

2013 JUL 10 AM 9:19

In the Matter of:

Docket No. TSCA-07-2013-0007

**Hannegan Construction Company
223 North Main Street
St. Charles, MO 63301**

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Hannegan Construction Company (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 record keeping 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 407 of TSCA, 15 U.S.C. § 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 Hannegan Construction Company, a corporation in good standing under the laws of the state of Missouri.

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

6. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.

7. EPA has promulgated record keeping regulations and other lead-based paint regulations, which are found within 40 C.F.R. Part 745, Subpart E (RRP Rule), pursuant to 15 U.S.C. § 2682, 2686, and 2687.

8. 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 this part (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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

9. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

10. 40 C.F.R. § 745.103 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.

11. 40 C.F.R. § 745.82(a)(2) provides that 40 C.F.R. § 745, Subpart E does not apply to renovations in target housing or child-occupied facilities in which a certified renovator, correctly using an EPA recognized test kit has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight.

12. 40 C.F.R. §§ 745.86(a) and .86(b)(1) require that, for a period of 3 years following completion of a renovation performed on target housing, the firm conducting the renovation must

retain records or reports which certify that a determination had been made that lead-based paint was not present on the components affected by the renovation, and must make these records available to EPA upon request.

13. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 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” within the meaning of 40 C.F.R. § 745.83.

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

17. On November 10, 2011, 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 an inspection of Respondent’s records concerning Respondent’s renovation work on

“target housing” (hereinafter, “the EPA Inspection”).

18. Beginning March 15, 2011, Respondent performed renovations on the property located at 4178 Robert Koch Hospital Rd, St. Louis, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

19. Beginning March 1, 2011 Respondent performed renovations on the property located at 444 Algonum Place, Webster Groves, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

20. Beginning April 14, 2011, Respondent performed renovations on the property located at 9911 Charm Court, Edmundson, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

21. Beginning May 23, 2011, Respondent performed renovations on the property located at 13788 Clayton Road, Chesterfield, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

22. Beginning June 13, 2011, Respondent performed renovations on the property located at 1617 Adgers Warf, Chesterfield, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

23. Beginning June 28, 2011, Respondent performed renovations on the property located at 47 Salem Estates, Ladue, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

24. Beginning July 19, 2011, Respondent performed renovations on the property located at 820 North Price Road, St. Louis, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

25. Beginning July 18, 2011, Respondent performed renovations on the property located at 18 Ardwick Drive, St. Peters, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

26. Beginning March 28, 2011, Respondent performed renovations on the property located at 9868 Northbridge Road, Ladue, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

27. Beginning June 28, 2011, Respondent performed renovations on the property located at 912 Penny Lane, Ballwin, Missouri. The renovation was completed prior to the EPA Inspection. This property was constructed before 1978.

28. Each of the properties listed in paragraphs 18 through 27 above is "target housing" as defined by 40 C.F.R. § 745.103.

Section V
Violations

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

Count I

29. Concerning the renovation performed at 4178 Robert Koch Hospital Rd, St. Louis, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R.

§ 745.86(a).

30. Respondent's failure to perform the acts indicated in above are in violations 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.

Count II

31. Concerning the renovation performed at 444 Algonum Place, Webster Groves, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

32. Respondent's failure to perform the acts indicated in above are in violations 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.

Count III

33. Concerning the renovation performed at 9911 Charm Court, Edmundson, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R.

§ 745.86(a).

34. Respondent's failure to perform the acts indicated in above are in violations 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.

Count IV

35. Concerning the renovation performed at 13788 Clayton Road, Chesterfield, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

36. Respondent's failure to perform the acts indicated in above are in violations 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.

Count V

37. Concerning the renovation performed at 1617 Adgers Warf, Chesterfield, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R.

§ 745.86(a).

38. Respondent's failure to perform the acts indicated in above are in violations 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.

Count VI

39. Concerning the renovation performed at 47 Salem Estates, Ladue, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

40. Respondent's failure to perform the acts indicated in above are in violations 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.

Count VII

41. Concerning the renovation performed at 912 Penny Lane, Ballwin, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

42. Respondent's failure to perform the acts indicated in above are in violations 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.

Count VIII

43. Concerning the renovation performed at 820 North Price Road, St. Louis, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

44. Respondent's failure to perform the acts indicated in above are in violations 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.

Count IX

45. Concerning the renovation performed at 18 Ardwick Drive, St. Peters, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

46. Respondent's failure to perform the acts indicated in above are in violations 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.

Count X

47. Concerning the renovation performed at 9868 Northbridge Road, Ladue, Missouri, Respondent claimed to have tested the target housing components affected by the renovation for lead-based paint, in accordance with 40 C.F.R. § 745.82(a)(2), and that these components did not contain lead-based paint. Respondent failed to maintain these lead-based paint testing records documenting compliance with 40 C.F.R. § 745.82(a)(2), and, at the time of the EPA Inspection, was unable to produce these records, which is a violation of 40 C.F.R. § 745.86(a).

48. Respondent's failure to perform the acts indicated in above are in violations 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

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

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

51. 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.

52. 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.

53. 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.

54. 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.

55. 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. Part 745 alleged in this document.

56. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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 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 Ten Thousand Five Hundred Forty-Eight Dollars (\$10,548), plus interest, as set out in Exhibit 1 to this Order. The payment shall be made

IN THE MATTER OF HANNEGAN CONSTRUCTION COMPANY
Docket No. TSCA-07-2013-0007

at the address below. The 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, 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, Kansas 66219;

and

Raymond C. Bosch, 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.

IN THE MATTER OF HANNEGAN CONSTRUCTION COMPANY
Docket No. TSCA-07-2013-0007

RESPONDENT
HANNEGAN CONSTRUCTION COMPANY

Date: 6/25/2013

by Michael Hannegan
owner
TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/9/2013

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

Date: July 9, 2013

By: Raymond C. Bosch
Raymond C. Bosch
Attorney Advisor
Office of Regional Counsel

IN THE MATTER OF HANNEGAN CONSTRUCTION COMPANY
Docket No. TSCA-07-2013-0007

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

Date: 7-10-13

Karina Borromeo

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

Exhibit 1

Hannegan Construction Company

Rate Period: Quarterly

Nominal Annual Rate: 1.000 %

Event	Date	Amount	Number	Period	End Date
1	Penalty	02/25/2013	10,548.00	1	
2	Payment	08/01/2013	2,658.22	4	Quarterly 05/01/2014

AMORTIZATION SCHEDULE - U.S. Rule (no compounding)

	Date	Penalty	Payment	Interest	Principal	Balance
Penalty	02/25/2013	10,548.00				10,548.00
1	08/01/2013		2,658.22	45.15	2,613.07	7,934.93
2	11/01/2013		2,658.22	19.84	2,638.38	5,296.55
2013 Totals		10,548.00	5,316.44	64.99	5,251.45	
3	02/01/2014		2,658.22	13.24	2,644.98	2,651.57
4	05/01/2014		2,658.22	6.65	2,651.57	0.00
2014 Totals		0.00	5,316.44	19.89	5,296.55	
Grand Totals		10,548.00	10,632.88	84.88	10,548.00	

IN THE MATTER OF Hannegan Construction Company, Respondent
Docket No. TSCA-07-2013-0007

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:

Hazelwood and Weber LLC
Matthew J. Fairless
200 North Third Street
St. Charles, Missouri 63301

Dated: 7/10/13

A handwritten signature in black ink that reads "Kathy Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

Kathy Robinson
Hearing Clerk, Region 7