



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2017 JUN 27 PM 2: 57

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: TSCA-08-2017-0007

IN THE MATTER OF:

DENVER DESIGN BUILD, LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) 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 filing this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF June, 2017.

Katherin E. Hall
Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2017 JUN 27 PM 2: 57

Docket No. TSCA-08-2017-0007

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Denver Design Build, LLC)
100 Kalamath Street)
Denver, Colorado 80223)
)
Respondent.)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, Denver Design Build, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. "Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling. 15 U.S.C. § 2681(17).
6. "Renovation" means 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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.

7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. Section 16 of TSCA, 15 U.S.C. § 2615, as modified by 40 C.F.R. part 19, authorizes the EPA to assess a civil penalty of up to \$37,500 for each violation of section 409.

III. RESPONDENT

8. Respondent is a company doing business in the State of Colorado.
9. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a “firm” as defined by 40 C.F.R. § 745.83.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. On June 19, 2014 an authorized representative of the EPA inspected Respondent’s jobsite at 4342 Winona Court, Denver, Colorado to determine compliance with the RRP Rule.
12. On August 13, 2015 an authorized representative of the EPA inspected Respondent’s jobsite at 2343 N. Vine Street, Denver, Colorado to determine compliance with the RRP Rule.
13. Both jobsites are residential properties constructed prior to 1978 and are “target housing” as the term is defined in 15 U.S.C. § 2681(17).
14. Respondent performed a “renovation,” at both properties as the term is defined in 40 C.F.R. § 745.83.

Count 1

15. The “initial certification” requirement at 40 C.F.R. § 745.89(a) provides that firms performing renovations on target housing are required to apply to the EPA for certification.
16. Respondent failed to obtain initial certification from the EPA prior to performing renovations on target housing, as required by 40 C.F.R. § 745.89(a).
17. Respondent’s failure to obtain initial certification constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

Counts 2 & 3

18. Firms performing renovations on target housing must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in §745.90, as required by 40 C.F.R. § 745.89(d)(2).

19. Respondent did not assign a certified renovator to either project, as required by 40 C.F.R. § 745.89(d)(2).
20. Respondent's failures to assign a certified renovator for both projects constitute violations of 40 C.F.R. § 745.89(d)(2) and section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

21. Firms performing renovations on target housing are required, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material to collect falling paint debris, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C).
22. At the time of the inspection on June 19, 2014, the EPA observed that no plastic sheeting or other disposable impermeable material was covering the ground to collect falling paint debris during the renovation.
23. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

24. Firms performing renovations on target housing are required to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area, pursuant to 40 C.F.R. § 745.85(a)(4)(i).
25. At the time of the inspection on June 19, 2014, the EPA observed uncontained waste, including paint chips and debris, outside of the work area.
26. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area constitutes a violation of 40 C.F.R. § 745.85(a)(4)(i) and section 409 of TSCA, 15 U.S.C. § 2689.

V. SETTLEMENT

27. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
28. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
29. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being

conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.

30. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of four thousand four hundred dollars (\$4,400) is appropriate to settle this matter.
31. Respondent consents and agrees to pay a civil penalty in the amount of four thousand four hundred dollars (\$4,400) in the manner described below.
32. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
33. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any commercial carrier or signed receipt confirmation:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If sent by wire transfer: Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: U.S. Environmental Protection Agency

Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

U.S. Treasury Contact Information:
REX (Remittance Express): 866-234-5681

Online debit and credit card payment:

www.Pay.gov
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

34. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek	and	Melissa Haniewicz
U.S. EPA Region 8 (8ENF-AT-TP)		Regional Hearing Clerk (8RC)
Technical Enforcement Program		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, Colorado 80202-1129		Denver, Colorado 80202-1129

35. In the event payment is not received by the specified due date, interest accrues from thirty (30) days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
36. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31st) day from the due date of any payment, and for each subsequent thirty (30) 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 ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
37. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent’s failure to perform pursuant to the terms of this Consent Agreement.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

38. In response to the violations alleged herein and in settlement of this matter Respondent shall perform the Supplemental Environmental Project (SEP) described in this Consent Agreement,

which the parties agree is intended to secure significant environmental or public health benefits.

39. Respondent has selected the residents of neighborhoods in the immediate vicinity of Gilpin Montessori Public School in Denver, Colorado as beneficiaries of the SEP.
40. Respondent shall complete a SEP as described below:
 - a. Design and prepare flyers offering free lead paint hazard testing;
 - b. Mail flyers to approximately 100 homes within the immediate vicinity of the elementary school identified above;
 - c. Provide funding of no less than three thousand dollars (\$3,000) to perform lead paint testing at homes requesting testing in response to distributed flyers;
 - d. Provide funding of no less than thirteen thousand dollars (\$13,000) to perform abatements of lead paint hazards identified through testing described above.
41. In the event that the process described in paragraph 40 does not result in sufficient properties requiring abatement of lead paint hazards, Respondent shall submit to the EPA a request in writing to perform additional targeting.
42. The SEP will be completed within one calendar year from the date the Final Order is filed approving this Consent Agreement.
43. Respondent's total expenditure for the SEP shall be no less than eighteen thousand dollars (\$18,000).
44. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.
45. Respondent has elected to retain KEMWest, Inc. of Denver, Colorado as a third-party contractor to perform testing for lead-paint hazards. Respondent has represented to the EPA that KEMWest, Inc. has experience in the type of activities to be performed under the SEP.
46. Respondent has also elected to retain Environmental Abatement Southwest, Inc. of Colorado Springs, Colorado as a third-party contractor to perform abatements of lead paint hazards. Respondent has represented to the EPA that Environmental Abatement Southwest, Inc. has experience in the type of activities to be performed under the SEP.
47. Respondent is responsible for ensuring that the entity or entities performing any portion of the SEP comply with all applicable terms of this Agreement.

48. Homes selected for lead paint hazard testing and abatements shall be limited to housing constructed prior to 1978 and otherwise consistent with the definition of "target housing" at 15 U.S.C. § 2681(17). In selecting abatements to perform, Respondent shall prioritize, to the extent practicable, homes built prior to 1950 and/or occupied by children under age six (6) or pregnant women.
49. Respondent certifies that, as of the date of this Consent Agreement:
- a. All cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is eighteen thousand dollars (\$18,000);
 - b. Respondent is not required to perform or develop the SEP by any federal, state, tribal, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
 - d. Respondent has not received and will not receive credit for the SEP in any other enforcement action;
 - e. Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity;
 - f. 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; and
 - g. Respondent is not a party to any federal financial assistance transaction that is funding or could fund the same activity as the SEP, and it has inquired of the SEP recipient and/or SEP implementer whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and/or the implementer that neither is a party to such a transaction.
50. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP under this Agreement 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 to enforce federal laws."
51. Within sixty (60) days of the date the Final Order is filed approving this Consent Agreement, Respondent shall submit for review and approval by EPA materials Respondent has prepared for distribution to offer testing for lead paint hazards.
52. Respondent shall provide the EPA with quarterly reports describing the actions Respondent has taken to meet its obligations under the SEP. These reports are due every three (3) months after the

effective date of this Consent Agreement, with each quarterly report due ten (10) days after the end of each calendar quarter (e.g., April 10, 2017, for the first quarter of 2017; July 10, 2017, for the second quarter of 2017, etc.). These reports shall include, at minimum, a detailed update on the progress of the SEP, including locations where lead testing and/or abatements have been performed during the reporting period, all lead testing and abatement reports prepared by the third-party contractors identified in paragraphs 45 and 46 for testing and abatements performed during the reporting period, potential setbacks, expenditures made in implementation of the SEP, and those activities scheduled for the next reporting period.

53. Within thirty (30) days after completion of the SEP described in paragraph 40, Respondent shall submit a SEP Completion Report to the EPA. The SEP Completion Report shall contain the following information:
 - a. A detailed description of the SEP as implemented, including a description of any problems encountered in completing the SEP and the solutions thereto;
 - b. An itemized list with documentation (including invoices and/or purchase orders) of all Respondent's SEP expenditures;
 - c. A description of the specific environmental and/or public health benefits resulting from implementation of the SEP, including (i) the number of requests received for lead testing; (ii) the number of properties tested; (iii) the address of each property tested; (iv) the number of lead abatements performed; and (v) the address of each property where a lead abatement was performed; and
 - d. A certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this Agreement.
54. The SEP Completion Report shall be submitted on or before the due date specified in paragraph 53 to Kristin Jendrek at the address provided in paragraph 34.
55. After receiving the SEP Completion Report, the EPA shall notify Respondent, in writing, (i) regarding any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that the EPA concludes that the SEP has been completed satisfactorily, or (iii) determine that the SEP has not been completed satisfactorily.
56. If the EPA elects to exercise option (i) in paragraph 55, i.e. the SEP Completion Report is determined to be deficient but the EPA has not made a final determination about the adequacy of the SEP completion itself, the EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency from the EPA within fourteen (14) days of receipt of such notification. The EPA and Respondent shall have an additional thirty (30) days from the EPA's receipt of such notification of objection to reach agreement on changes necessary to the SEP Completion Report. If the EPA and Respondent cannot reach agreement on any such issue within this thirty-day period, the EPA shall provide a written statement of its decision on the adequacy of the SEP to Respondent.

57. Each submission required under this Section shall include the following certification, to be signed by an officer of 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, I believe that 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.

58. In the event Respondent fails to comply with any terms or provisions of this Consent Agreement relating to the performance of the SEP and/or the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraphs b and c below, if the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this Agreement, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of eighteen thousand five hundred dollars (\$18,500), minus the amount that Respondent can demonstrate it spent on the SEP.
- b. The EPA shall determine whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP.
- c. If Respondent fails to timely and completely submit the SEP Completion Report required by this Agreement, 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.
- d. Respondent shall pay any stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in section V above.
- e. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.

59. Respondent shall maintain legible copies of documentation for the SEP Completion Report and for any other information submitted to the EPA relating to this SEP for five (5) years and shall provide the EPA with copies of such documentation within fourteen (14) days of any request from the EPA for this documentation.

VII. GENERAL PROVISIONS

60. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
61. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and 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 Consent Agreement.

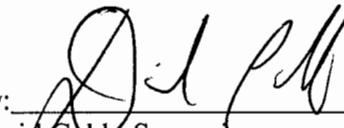
62. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
63. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.
64. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
 - a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
 - b. Claims based on criminal liability; and,
 - c. Claims based on any other violations of the Act or federal or state law.
65. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
66. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
67. Respondent agrees that the penalty specified in this Consent Agreement, any interest paid, and any amounts paid under this Consent Agreement pursuant to Section VI (Supplemental Environmental Project) shall not be deductible for purposes of local, state, or federal taxes.
68. Each party to this action shall bear its own costs and attorney fees, if any.
69. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
70. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which the Final Order is filed approving this Consent Agreement.

The foregoing Combined Complaint and Consent Agreement In the Matter of Denver Design Build, LLC, is hereby stipulated, agreed, and approved for entry.

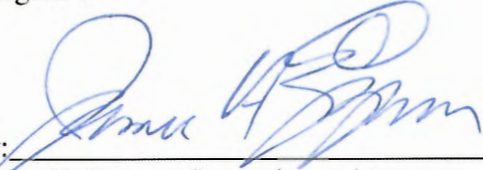
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,

Complainant.

Date: 6/26/17

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

Date: 6/22/17

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

Denver Design Build, LLC,

Respondent.

Date: 6/15/2017

By: 

Printed Name: JEFF AILES

Title: OWNER

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **DENVER DESIGN AND BUILD, LLC; DOCKET NO.: TSCA-08-2017-0007** was filed with the Regional Hearing Clerk on June 27, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on June 27, 2017, to:

Respondent

Denver Design Build, LLC
100 Kalamath Street
Denver, Colorado 80223

And emailed to:

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

June 27, 2017


Melissa Haniewicz
Regional Hearing Clerk