

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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

In the Matter of)
)
The Employer Advantage, LLC) **Docket No. TSCA-07-2017-0005**
)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA), Region 7 and The Employer Advantage, LLC (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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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 L, *Lead-Based Paint Activities*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.
4. Respondent is a business limited liability company in good standing under the laws of the state of Missouri and doing business in Missouri.

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. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standard for renovations that disturb lead-based paint in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The regulations set forth at 40 C.F.R. Subpart L, *Lead-Based Paint Activities*, including the Training Provider Rule, require training programs providing instruction in lead-based paint activities or renovation activities in target housing and child-occupied facilities that meets minimum training elements in the following areas: facilities and equipment; curriculum and course content; training hours; hands-on training activities; course test; training program quality control and quality improvement; work practice standards; and recordkeeping.

10. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

11. The regulation at 40 C.F.R. § 745.223 defines “training provider” as any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

12. The regulation at 40 C.F.R. § 745.235(a) provides that failure to comply with any provision of 40 C.F.R. § 745.225 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart L.

13. 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 \$37,500 for each violation of Section 409 of TSCA. Each day that such violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689.

General Factual Allegations

14. On or about January 28, 2016 and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection of Respondent’s training program located at: 1027 Main Street, Suite 401, Joplin, Missouri 64801 to determine Respondent’s compliance with the requirements of TSCA and requirements of the Training Provider Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on April 4, 2016.

15. Respondent is, and at all times referred to herein was, a limited liability company doing business in the state of Missouri under the registered name The Employer Advantage, LLC.

16. Respondent, at all times referred to herein, was a “person” and “firm” as defined by 40 C.F.R. § 745.83.

17. At the time of the EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was an accredited training provider as defined by 40 C.F.R. § 745.223.

18. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined the following violations of the Training Provider Rule, 40 C.F.R. § 745.225, and Section 409 of TSCA, 15 U.S.C. § 2689.

Allegations of Violation

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

Counts 1–2

20. The facts stated in Paragraphs 14 through 18 above are herein incorporated.

21. Pursuant to 40 C.F.R. § 745.225(i)(1)(viii), for renovator refresher courses, training program providers must maintain a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course.

22. The EPA inspection revealed that Respondent failed to maintain and make available a copy of each trainee's prior certification completion showing that each trainee was eligible to take the refresher course for refresher courses provided by Respondent on July 22, 2015 and June 8, 2015.

23. Respondent's failure to maintain and make available to EPA a copy of each trainee's prior certification completion is a violation of 40 C.F.R. § 745.225(i)(1)(viii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 3–4

24. The facts stated in Paragraphs 14 through 18 above are herein incorporated.

25. Pursuant to 40 C.F.R. § 745.225(c)(13)(i), training program providers must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered at least seven (7) business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course.

26. The EPA inspection and subsequent information gathered by EPA revealed that Respondent failed to provide EPA with notification seven (7) days prior to the refresher renovator course provided on June 8, 2015 and the initial renovator course provided on August 26, 2014.

27. Respondent's failure to provide EPA with notification at least seven (7) days prior to the lead-based paint activities courses referenced above is a violation of 40 C.F.R. § 745.225(c)(13)(i). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 5–7

28. The facts stated in Paragraphs 14 through 18 above are herein incorporated.

29. Pursuant to 40 C.F.R. § 745.225(c)(10), courses offered by training program providers must teach the work practice standards contained in 40 C.F.R. § 745.85 or 40 C.F.R. § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

30. Documentation gathered by the EPA inspection revealed that Respondent failed to ensure that the renovator courses provided on June 8, 2015, August 26, 2014 and August 27,

2014 taught the work practice standards contained in 40 C.F.R. § 745.85 or 40 C.F.R. § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

31. Respondent's failure to ensure the referenced courses taught the work practice standards in a manner to provide the trainees with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting is a violation of 40 C.F.R. § 745.225(c)(10). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the alleged violations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

33. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

34. 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.

Penalty Payment

35. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Seven Thousand Seven Hundred Eight-Four Dollars (\$7,784.00) as set forth below.

36. Respondent shall pay the penalty within thirty (30) days of the effective date of the 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, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

37. 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

Clarissa Howley Mills, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

38. Respondent understands that its failure to timely pay any portion of the civil penalty as stated in Paragraph 35 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

39. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for violates alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

40. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and

Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

41. The effect of settlement described in Paragraph 39 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 42 herein.

42. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA, 15 U.S.C. § 2601 et. seq. and all regulations promulgated thereunder.

43. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

44. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

45. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.


46. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

47. This Consent Agreement and Final Order shall apply and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
The Employer Advantage, LLC

Date: 12/16/16

By:



Jared R. Young

Print Name

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/5/17

Capital Message for
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 12/22/2016

CH Mills
Clarissa Howley Mills
Office of Regional Counsel
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913) 551-7743
mills.clarissa@epa.gov

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer

Jan. 10, 2017

Date

IN THE MATTER Of The Employer Advantage, LLC, Respondent
Docket No. TSCA-07-2017-0005

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 emailed to Attorney for Complainant:

mills.clarissa@epa.gov

Copy by First Class Mail to Respondent:

Jared R Young
The Employer Advantage, LLC
1027 S. Main Street, Suite 401
Joplin, Missouri 64801

Dated: VI0/17


Kathy Robinson
Hearing Clerk, Region 7