

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11/08/13 11:08:10

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

BEFORE THE ADMINISTRATOR

In the Matter of:)
) **Docket No. TSCA-07-2013-0025**
)
ROTHERS, INC.,)
d/b/a ROTHERS DESIGN/BUILD)
4224 Rainbow Boulevard)
Kansas City, KS 66103,)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and ROTHERS, INC. d/b/a Rothers Design/Build (hereinafter 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 lead-based paint certification, information distribution and renovation 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 Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686.

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 ROTHERS, INC., a corporation in good standing under the laws of the state of Kansas, doing business in the state of Missouri as Rothers Design/Build. The Respondent meets the definition of a “Firm” and of a “Person”, as those terms are set forth in 40 C.F.R. § 745.83.

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. 15 U.S.C. § 2681(17) 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.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

8. EPA has promulgated regulations regarding lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of individuals and firms who are involved in these activities. These regulations are found within 40 C.F.R. Part 745, Subpart E (RRP Rule), and were promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682.

9. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the Administrator of EPA promulgate regulations with recordkeeping and reporting requirements necessary to insure the effective implementation of TSCA Title IV, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

10. EPA has promulgated regulations requiring each person who performs for compensation a renovation of target housing to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity. These regulations are found within 40 C.F.R. Part 745.86, and were promulgated pursuant to Section 407 of TSCA, 15 U.S.C. § 2687.

11. 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.

12. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain all records necessary to demonstrate compliance with the residential property renovation for a period of three (3) years following completion of the renovation activities. 40 C.F.R. § 745.86(b)(6) specifically requires firms performing renovations to retain documentation of compliance with the requirements of § 745.85 [Work Practice Standards], “including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).”

13. 40 C.F.R. § 745.85 sets forth the regulations for Work Practice Standards that must be followed by firms performing renovations on *target housing*. Among these are:

(a) 40 C.F.R. § 745.85(a)(1) Occupant Protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

(b) 40 C.F.R. § 745.85(a)(2)(i)(B) Interior Renovations. Firms must close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(c) 40 C.F.R. § 745.85(a)(2)(i)(D) Interior Renovations. Firms must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(d) 40 C.F.R. § 745.85(a)(4)(i) Waste From Renovations. Firms must ensure that waste from renovation activities is contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(e) 40 C.F.R. § 745.85(a)(2)(ii)(B) Exterior Renovations. Firms must ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(f) 40 C.F.R. § 745.85(a)(2)(ii)(C) Exterior Renovations. Firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property lien prevents 10 feet of such ground covering.

14. 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).

15. 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**

16. Respondent is and at all times referred to herein was a “person” and a “firm” within the meaning of 40 C.F.R. § 745.83.

17. On February 16, 2012, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the United States Environmental Protection Agency, Region 7 conducted an inspection of a residence built in 1900-1920 located at 711 Emanuel Cleaver Boulevard, Kansas City, Missouri (hereinafter Residence), where Respondent was in the process of conducting “renovations”, as defined by 40 C.F.R. § 745.83, for compensation.

18. The Residence, which was the subject of the EPA Inspection, is residential housing built between 1900 and 1920 and meets the definition of *target housing* under 15 U.S.C. § 2681(17).

19. During the EPA Inspection, EPA representatives observed that, in the course of its renovation of the Residence, the Respondent failed to perform the following record keeping requirements:

(a) Retain all records necessary to demonstrate compliance with the residential property renovation for a period of three (3) years following completion of the renovation activities, as required by 40 C.F.R. § 745.86(a).

(b) Retain documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b), as required by 40 C.F.R. § 745.86(b)(6).

20. During the EPA Inspection, EPA representatives observed that, in the course of its renovation of the Residence, the Respondent failed to perform the following work practice standards:

(a) Post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area, as required by 40 C.F.R. § 745.85(a)(1).

(b) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

(c) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(i)(D).

(d) Ensure that waste from renovation activities is contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i).

(e) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, as required by 40 C.F.R. § 745.85(a)(2)(ii)(B).

(f) Cover the ground with plastic sheeting or other disposal impermeable material extending ten (10) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

Section V
Violations

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

Count I

21. Concerning its renovation performed at the Residence, Respondent failed to retain lead safe work practices records documenting compliance with the requirements of 40 C.F.R. § 745.85(a) & (b), which is a violation of 40 C.F.R. § 745.86(a) & (b)(6).

22. Respondent's failure to perform the act indicated above is in violation 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

23. Concerning its renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area, which

is a violation of 40 C.F.R. § 745.85(a)(1).

24. Respondent's failure to perform the acts indicated above is in violation 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

25. Concerning its renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to close and cover all ducts opening in the work area with taped-down plastic sheeting or other material, which is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B).

26. Respondent's failure to perform the acts indicated above are in violation 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

27. Concerning its renovation performed at the Residence, Respondent failed to cover the floor surface with at least six (6) feet of plastic sheeting or other disposable impermeable material before beginning the renovation, which is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D).

28. Respondent's failure to perform the acts indicated above are in violation 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

29. Concerning its renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to contain waste from renovation activities to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal, which is a violation of 40 C.F.R. § 745.85(a)(4)(i).

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

31. Concerning its renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to ensure that doors in the work area were covered with impermeable material to confine dust and debris, which is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(B).

32. Respondent's failure to perform the acts indicated in above is in violation 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

33. Concerning its renovation performed at the Residence, at the time of the EPA Inspection, Respondent failed to cover the ground with impermeable material extending ten (10) feet or more, which is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

34. Respondent's failure to perform the acts indicated in above is in violation 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

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

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

37. 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.

38. 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.

39. 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. Respondent agrees that the effect of this settlement is conditioned upon the accuracy of this representation of Respondent to EPA.

40. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty and payment of any stipulated penalties as specified in the Final Order.

41. Payment of the mitigated civil penalty, as set forth in the Final Order 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.

42. Respondent understands that his 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 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 mitigated civil penalty of One Thousand Dollars (\$1,000), plus interest, as set out in Exhibit 1 to this Order. The payment shall be made 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.

RESPONDENT
ROTHERS, INC., d/b/a Rothers Design/Build

Date: 9/4/2013

by  _____

President

TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/5/2013

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

Date: Sept. 5, 2013

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

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

Date: 9-11-13

Karina Borromeo

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

Exhibit 1

Rothers Inc

Rate Period : Quarterly

Nominal Annual Rate : 1.000 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	10/01/2013	1,000.00	1		
2 Payment	10/01/2013	250.00	1		
3 Payment	01/01/2014	251.25	3	Quarterly	07/01/2014

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

Date	Payment	Interest	Principal	Balance
Loan 10/01/2013				1,000.00
1 10/01/2013	250.00	0.00	250.00	750.00
2013 Totals	250.00	0.00	250.00	
2 01/01/2014	251.25	1.88	249.37	500.63
3 04/01/2014	251.25	1.25	250.00	250.63
4 07/01/2014	251.25	0.62	250.63	0.00
2014 Totals	753.75	3.75	750.00	
Grand Totals	1,003.75	3.75	1,000.00	

IN THE MATTER OF Rothers, Inc., d/b/a Rothers Design/Build, Respondent
Docket No. TSCA-07-2013-0025

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 email to Respondent:

Greg Rothers
Rothers, Inc., d/b/a Rothers Design/Build
4224 Rainbow Boulevard
Kansas City, Kansas 66103

Dated: 9/11/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7