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7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

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11 In the matter of:) Docket No. TSCA-09-2019- 0046
12)
Big Red Construction,)
13)
14 Respondent.)
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CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

29 I. CONSENT AGREEMENT

30 The United States Environmental Protection Agency, Region IX (“EPA”), and Big Red
31 Construction (the “Respondent”) agree to settle this matter and consent to the entry of this
32 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
33 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

34 A. AUTHORITY AND PARTIES

35 1. This is a civil administrative penalty action brought against Respondent pursuant to
36 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
37 of Section 409 of TSCA, 15 U.S.C. § 2615(a), by failing to comply with Sections 402 and 406
38 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at
39 40 C.F.R. Part 745, Subpart E.

1 2. Complainant is the Chief of the Toxics Section in the Enforcement and Compliance
2 Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this
3 action and to sign a consent agreement settling this action.

4 3. Respondent, a California corporation located in Lafayette, California, is a residential
5 kitchen and bathroom renovator.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745,
8 Subpart E requires a person who performs for compensation a renovation of target housing and
9 child-occupied facilities to provide a lead hazard information pamphlet to the owner and
10 occupant before beginning the renovation.

11 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.
12 Part 745, Subpart E provides requirements for certification of individuals and firms engaged in
13 lead-based paint activities and work practice standards for renovation, repair, and painting
14 activities in target housing and child-occupied facilities.

15 6. "Target housing" means any housing constructed prior to 1978, except housing for the
16 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
17 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
18 U.S.C. § 2681.

19 7. "Person" means any natural or judicial person including any individual, corporation,
20 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
21 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §
22 745.83.

23 8. "Firm" means a company, partnership, corporation, sole proprietorship or individual
24 doing business, association, or other business entity; a Federal, State, Tribal, or local government
25 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

26 9. "Renovation" means the modification of any existing structure, or portion thereof, that
27 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
28 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the

1 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
2 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
3 scraping, or other such activities that may generate paint dust); the removal of building
4 components (*e.g.*, walls, ceilings, plumbing windows); weatherization projects (*e.g.*, cutting
5 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
6 thresholds to install weatherstripping), and interim controls that disturb painted surfaces

7 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
8 745.83.

9 10. “Painted surface” means a component surface covered in whole or in part with paint
10 or other surface coatings. 40 C.F.R. § 745.83.

11 11. “Component or building component” means specific design or structural elements or
12 fixtures of a building or residential dwelling that are distinguished from each other by form,
13 function, and location. These include, but are not limited to interior components such as . . .
14 windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and
15 exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40
16 C.F.R. § 745.83.

17 12. “Renovator” means any individual who either performs or directs workers who
18 perform renovations. A certified renovator is a renovator who has successfully completed a
19 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
20 745.83.

21 13. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead
22 Hazard Information for Families, Child Care Providers and Schools,” developed under Section
23 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal
24 pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same
25 purpose. 40 C.F.R. § 745.83.

26 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
27 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
28 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to

1 exceed \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
2 occurred before November 2, 2015, and \$38,892 per day for each violation of Section 409 of
3 TSCA, 15 U.S.C. § 2689, that occurred on or after November 2, 2015 where penalties were
4 assessed on or after January 15, 2018 but before January 15, 2019.

5 C. ALLEGED VIOLATIONS

6 15. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

7 16. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined
8 at 40 C.F.R. § 745.83.

9 17. In or around 2015-2017, Respondent performed “renovations,” as that term is defined
10 at 40 C.F.R. § 745.83, for compensation at the residential properties located at: 5801 Charles
11 Avenue in El Cerrito, California; 1448 Josephine Street in Berkeley, California; 1069 Trestle
12 Glen Road in Oakland, California; and 10 Hardie Drive in Moraga, California (collectively, the
13 “Properties”).

14 18. At all times relevant to this CAFO, the Properties were “target housing,” as that term
15 is defined at 40 C.F.R. § 745.83.

16 19. Firms that perform renovations for compensation must apply to EPA for certification
17 to perform renovations. 40 C.F.R. § 745.89(a).

18 20. On or after April 22, 2010, no firm may perform a renovation without certification
19 from EPA under 40 C.F.R. § 745.89(a) in target housing unless the renovation is performed in
20 target housing that has been determined to be lead-free pursuant to 40 C.F.R. § 745.82(a). 40
21 C.F.R. § 745.81(a)(2)(ii).

22 21. At all times relevant to this CAFO, Respondent did not have a certification from
23 EPA to perform renovations for compensation at the Properties.

24 22. At all times relevant to this CAFO, the Properties had not been determined to be
25 lead-free pursuant to 40 C.F.R. § 745.82(a) before the renovations for compensation occurred.

26 23. Respondent’s performance of renovations for compensation at the Properties without
27 certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. §
28 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

1 24. No more than 60 days before beginning renovation activities in any residential
2 dwelling unit of target housing, the firm performing the renovation must provide the owner of the
3 unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 748.83. 40 C.F.R. § 745.84(a)(1).

4 25. Respondent did not provide the owners with the “pamphlet” prior to the renovations
5 at the Properties.

6 26. Respondent’s failures to provide the owners with the “pamphlet” prior to the
7 renovations at the Properties constitute four violations of 40 C.F.R. § 745.84(a)(1) and Section 409
8 of TSCA, 15 U.S.C. § 2689.

9 27. Firms performing renovations must retain documentation of compliance with the
10 requirements of § 745.85, including documentation that: a certified renovator was assigned to the
11 project; a certified renovator provided on-the-job training for workers used on the project; a
12 certified renovator performed or directed workers who performed all of the work practice tasks
13 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning
14 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

15 28. Respondent did not retain documentation for the renovations performed at the
16 Properties that: a certified renovator was assigned to the project; a certified renovator provided
17 on-the-job training for workers used on the project; a certified renovator performed or directed
18 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
19 renovator performed the post-renovation cleaning verification described in § 745.85(b).

20 29. Respondent’s failures to retain documentation for the renovations performed at the
21 Properties that: a certified renovator was assigned to the project; a certified renovator provided
22 on-the-job training for workers used on the project; a certified renovator performed or directed
23 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
24 renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute
25 16 violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

26 30. Firms performing renovations must ensure that a certified renovator is assigned to
27 each renovation performed by the firm and discharges all of the certified renovator
28 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

1 31. Respondent did not ensure that a certified renovator discharged all of the certified
2 renovator responsibilities identified in § 745.90 for the renovations performed at the Properties.

3 32. Respondent's failures to ensure that a certified renovator discharged all of the
4 certified renovator responsibilities identified in § 745.90 for the renovations performed at the
5 Properties constitute four violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15
6 U.S.C. § 2689.

7 **D. RESPONDENT'S ADMISSIONS**

8 33. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
9 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
10 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
11 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
12 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
13 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
14 proposed Final Order contained in this CAFO.

15 **E. CIVIL ADMINISTRATIVE PENALTY**

16 34. In settlement of the violations specifically alleged in Section I.C of this CAFO,
17 Respondent shall pay a civil administrative penalty of THREE THOUSAND DOLLARS
18 (\$3,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of
19 this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including
20 the name and docket number of this case, for the amount, payable to "Treasurer, United States of
21 America," (or be paid by one of the other methods listed below) and sent as follows:

22 **Regular Mail:**

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

28 **Wire Transfers:**

Wire transfers must be sent directly to the Federal Reserve Bank in New
York City with the following information:
Federal Reserve Bank of New York

1 ABA = 021030004
2 Account = 68010727
3 SWIFT address = FRNYUS33
4 33 Liberty Street
5 New York, NY 10045
6 Beneficiary = U.S. Environmental Protection Agency

7 Certified or Overnight Mail:

8 U.S. Bank
9 1005 Convention Plaza
10 Mail Station SL-MO-C2GL
11 ATTN Box 979077
12 St. Louis, MO 63101

13 ACH (also known as Remittance Express or REX):

14 Automated Clearinghouse (ACH) payments to EPA can be made through
15 the U.S. Treasury using the following information:

16 U.S. Treasury REX/Cashlink ACH Receiver
17 ABA = 051036706
18 Account = 31006, Environmental Protection Agency
19 CTX Format Transaction Code 22 – checking

20 Physical location of U.S. Treasury facility:

21 5700 Rivertech Court
22 Riverdale, MD 20737

23 Remittance Express (REX) = (866) 234-5681

24 On Line Payment:

25 This payment option can be accessed from the information below:

26 www.pay.gov
27 Enter "SFO 1.1" in the search field
28 Open form and complete required fields

If clarification regarding a particular method of payment remittance is
needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

23 A copy of each check, or notification that the payment has been made by one of the other
24 methods listed above, including proof of the date payment was made, shall be sent with a
25 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
26 following addresses:

1 Regional Hearing Clerk
2 Office of Regional Counsel (ORC-1)
3 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

4 Christopher Rollins
5 Toxics Section
6 Enforcement and Compliance Assurance Division (ENF-4-1)
7 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

8 35. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
9 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
10 use such payment as a tax deduction.

11 36. If Respondent fails to pay the assessed civil administrative penalty of THREE
12 THOUSAND DOLLARS (\$3,000), as identified in Paragraph 34, by the deadline specified in
13 that Paragraph, then Respondent shall pay a stipulated penalty to EPA of \$500 per day in addition
14 to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty
15 and all accrued stipulated penalties are paid and shall become due and payable upon EPA's
16 written request. Failure to pay the civil administrative penalty specified in Paragraph 34 by the
17 deadline specified in that Paragraph may also lead to any or all of the following actions:

18 (1) EPA may refer the debt to a credit reporting agency, a collection
19 agency, or to the Department of Justice for filing of a collection action in the appropriate United
20 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
21 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
22 collection proceeding.

23 (2) The U.S. Government may collect the debt by administrative offset
24 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
25 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
26 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
27 C.F.R. §§ 13(C) and 13(H).

1 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
2 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
3 business with EPA or engaging in programs EPA sponsors or funds.

4 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
5 Government may assess interest, administrative handling charges, and nonpayment penalties
6 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
7 civil administrative penalty specified in Paragraph 34 by the deadline specified in that Paragraph.

8 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
9 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
10 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
11 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
12 (30) days of the effective date of this CAFO.

13 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
14 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
15 based on either actual or average cost incurred (including both direct and indirect costs), for
16 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

17 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
18 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
19 may be assessed on all debts more than ninety (90) days delinquent.

20 F. CERTIFICATION OF COMPLIANCE

21 37. In executing this CAFO, Respondent certifies that it is now fully in compliance with
22 the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

23 G. RETENTION OF RIGHTS

24 38. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
25 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
26 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
27 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
28 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal

1 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
2 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
3 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

4 39. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
5 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
6 and permits.

7 H. ATTORNEYS' FEES AND COSTS

8 40. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
9 this proceeding.

10 I. EFFECTIVE DATE

11 41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
12 effective on the date that the Final Order contained in this CAFO, having been approved and
13 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

14 J. BINDING EFFECT

15 42. The undersigned representative of Complainant and the undersigned representative of
16 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
17 of this CAFO and to bind the party he or she represents to this CAFO.

18 43. The provisions of this CAFO shall apply to and be binding upon Respondent and its
19 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
20 and assigns.

21
22 FOR RESPONDENT BIG RED CONSTRUCTION:


23 6-14-19
24 DATE

25 Kathy Kovell
KATHY KOVELL
President
Big Red Construction

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FOR COMPLAINANT EPA:

6/20/19
DATE

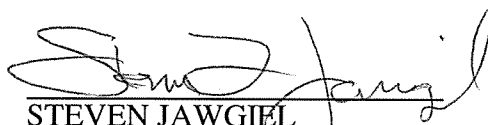


DOUGLAS K. MCDANIEL
Chief, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Big Red Construction having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0046) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of THREE
5 THOUSAND DOLLARS (\$3,000), and comply with the terms and conditions set forth in the
6 Consent Agreement.

7
8
9 07/01/19
DATE

10 
STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (In the Matter of: Big Red Construction, TSCA-09-2019-~~0046~~) has been filed with the Regional Hearing Clerk for U.S. EPA, Region 9, and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

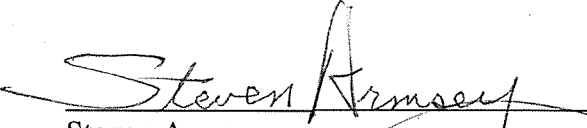
Ms. Kathy Kovell
President
Big Red Construction
946 Hough Avenue
Lafayette, CA 94549

Certified Mail No.: 7017 2400 0000 3794 2402

and Hand-Delivered to:

Edgar Coral
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Date: 19-7-10


Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 9