

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR**

2013 APR 29 AM 9:45

In the Matter of:

Docket No. TSCA-07-2013-0008

**Target Aluminum of St. Louis
d/b/a Dalco Home Remodeling
13795 St. Charles Rock Road
Bridgton, MO**

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Target Aluminum of St. Louis d/b/a Dalco Home Remodeling (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

In the Matter of Target Aluminum of St. Louis d/b/a Dalco Home Remodeling
Docket No. TSCA-07-2013-0008

failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule) pursuant to 15 U.S.C. § 2682, 2686, and 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 Target Aluminum of St. Louis d/b/a Dalco Home Remodeling, 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 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings and for standards in conducting those renovation and remodeling activities.

7. Section 407 of TSCA, 15 U.S.C. § 2687 required 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.

8. On June 1, 1998, EPA promulgated information distribution and recordkeeping requirements in regulations codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard

Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule)
pursuant to 15 U.S.C. § 2686.

9. On April 22, 2008, EPA amended and re-codified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule) pursuant to 15 U.S.C. § 2682, 2686, and 2687.

10. Under 40 C.F.R. Part 745, Subpart E, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and or painting activities in target housing and or child-occupied facilities; must be employed by an EPA-certified renovation firm and must comply with the specified work practice and recordkeeping requirements of the RRP Rule by April 22, 2008. Each person who performs for compensation, a renovation of target housing or a child-occupied facility must also provide a lead hazard information pamphlet to the owner and occupant of such housing or child-occupied facility prior to commencing the renovation and must comply with the PRE Rule by June 1, 1999, codified at 40 C.F.R. § 745.85, and with the amended information distribution requirements of the RRP Rule, recodified at 40 C.F.R. § 745.84, by April 22, 2008.

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, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

12. 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.

13. 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.

14. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

15. 40 C.F.R. § 745.86(a) requires that the firm performing the renovation must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.

16. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, of the Lead Renovation, Repair and Painting Program (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).

17. 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

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

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

20. On February 17, 2011, Respondent entered into a contract to perform renovations on the property located at 3014 Trafalgar Drive, St. Louis, Missouri. This property was constructed before 1978.

21. On April 2, 2011, Respondent entered into a contract to perform renovations on the property located at 5853 Kingwood Drive, Affton, Missouri. This property was constructed before 1978.

22. On March 29, 2011, Respondent entered into a contract to perform renovations on the property located at 9755 Durham, St. Louis, Missouri. This property was constructed before 1978.

23. The properties listed in paragraphs 20, 21 and 22 above are “target housing” as defined by 40 C.F.R. § 745.103.

Section V
Violations

Count I

24. Respondent failed to retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 as required by C.F.R. § 745.86(b)(6) for renovations performed at 3014 Trafalgar Drive, St. Louis, Missouri.

25. Respondent's failure to perform the act indicated above is a 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

26. Respondent failed to retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 as required by C.F.R. § 745.86(b)(6) for renovations performed at 5853 Kingwood Drive, Affton, Missouri.

27. 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 III

28. Respondent failed to retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 as required by C.F.R. § 745.86(b)(6) for renovations performed at 9755 Durham, St. Louis, Missouri.

29. 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

Section VI
Consent Agreement

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

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

32. 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.

33. 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.

34. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge it is presently in compliance with all requirements of 40 C.F.R. Part 745.

35. 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.

36. 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.

37. 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.

38. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP) within ninety (90) days from the date this agreement is finalized, which the parties agree is intended to secure significant environmental and/or public health benefit. Respondent will provide window replacement at 5503 Plover, St. Louis, Missouri, where lead is present. The project will consist of the replacement of fifteen (15) windows at the location. Total cost of the SEP will be at least \$8,900.00. Prior to beginning SEP activities on any residential property, Respondent will provide a work plan proposal for approval by EPA. The work plan proposal will detail the activities to be undertaken at the property. The work plan proposal shall be directed to the following:

Candace Bias
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

Upon approval from EPA, Respondent shall proceed with the SEP project.

39. Respondent agrees that the abatement work on all SEPs referenced in Paragraph 38 above will be performed in accordance with the regulatory requirements of 40 C.F.R. Part 745, Lead; Renovation, Repair, and Painting Program.

40. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;

In the Matter of Target Aluminum of St. Louis d/b/a Dalco Home Remodeling
Docket No. TSCA-07-2013-0008

(ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;

(iii) The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

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, 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.

The report shall be directed to the following:

As to EPA:

Candace Bias
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

41. If the SEP referenced in Paragraph 38 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 100% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP

project is completed by the anticipated completion date of within 180 days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 41 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

42. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

43. Defendant/Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Defendant/Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee

In the Matter of Target Aluminum of St. Louis d/b/a Dalco Home Remodeling
Docket No. TSCA-07-2013-0008

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

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

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT

**TARGET ALUMIONUM OF ST. LOUIS
d/b/a DALCO HOME REMODELING**

Date: 4-3-2013

by




V.P

TITLE

In the Matter of Target Aluminum of St. Louis d/b/a Dalco Home Remodeling
Docket No. TSCA-07-2013-0008

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/25/13

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

Date: 4/23/13

By: 
Kent Johnson
Office of Regional Counsel

In the Matter of Target Aluminum of St. Louis d/b/a Dalco Home Remodeling
Docket No. TSCA-07-2013-0008

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

Date: April 29, 2013

Karina Borromeo

Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

**IN THE MATTER OF Target Aluminum of St. Louis d/b/a Dalco Home Remodeling, Respondent
Docket No. TSCA-07-2013-0008**

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:

johnson.kent@epa.gov

Copy by First Class Mail to Respondent:

**David L. Dickerson, Jr.
Dalco Home Remodeling, Inc.
13795 St. Charles Rock Road
P.O. Box 608
Bridgton, Missouri 63044**

Dated:

4/29/13



**Kathy Robinson
Hearing Clerk, Region 7**