

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2020-0072
)	
PALMETTO CONTRACTING)	CONSENT AGREEMENT
SERVICES, LLC,)	
)	
Meridian, Idaho,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Palmetto Contracting Services, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities, including certification of individuals and firms for renovations and work practice standards for renovations. These rules are codified at 40 C.F.R. Part 745, subpart E, Residential Property Renovation.

3.2. Under 40 C.F.R. § 745.87, failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

3.3. 40 C.F.R. Part 745, Subpart E applies to all renovations performed for compensation in target housing.

3.4. “Target housing” is defined under Section 401(17) of TSCA, 15 U.S.C. § 2681(17), in part, as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities.”

3.5. “Person” is defined at 40 C.F.R. § 745.83 to mean “any natural or judicial person including any individual, corporation, partnership, or association.”

3.6. “Firm” is defined at 40 C.F.R. § 745.83 to mean “a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.”

3.7. “Renovation” is defined at 40 C.F.R. § 745.83 to mean “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces.” It includes the removal, modification or repair of painted surfaces or painted components; the removal of building components; and weatherization projects. It does not include minor repair and maintenance activities.

3.8. “Painted surface” is defined at 40 C.F.R. § 745.83 to mean “a component surface covered in whole or in part with paint or other surface coatings.”

3.9. “Component” or “building component” are defined at 40 C.F.R. § 745.83 to mean “specific design or structural elements or fixtures of a . . . residential dwelling that are distinguished from each other by form, function, and location.” They include interior components such as ceilings, crown molding, walls, doors, floors, windows and trim, and exterior components such as ceilings, soffits, fascias, rake boards, corner boards, siding, windowsills, casings, sashes and wells.

3.10. “Minor repair and maintenance activities” are defined at 40 C.F.R. § 745.83 to mean activities “that disrupt 6 square feet or less of painted surface per room for interior

activities or 20 square feet or less of painted surface for exterior activities . . . where the work does not involve window replacement or demolition of painted surface areas.”

3.11. Respondent is a company or corporation doing business in the State of Idaho.

3.12. Respondent is therefore a “firm” within the meaning of 40 C.F.R. § 745.83.

3.13. On or about September 13, 2018, Respondent performed renovation work for compensation at a residential property located at 1112 West O’Farrell Street in Boise, Idaho, which was built in 1905 (“the O’Farrell Renovation”).

3.14. The O’Farrell Renovation involved a full remodel of the interior, including window replacement and demolition and relocation of interior walls.

3.15. Therefore, Respondent performed a “renovation” on “target housing,” as these terms are defined at 40 C.F.R. § 745.83.

COUNT 1

3.16. Under 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a), no firm may perform, offer, or claim to perform renovations in target housing without obtaining initial certification from EPA.

3.17. Respondent did not obtain firm certification from EPA prior to performing the O’Farrell Renovation.

3.18. Respondent’s failure to obtain firm certification from EPA before performing the O’Farrell Renovation is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

COUNT 2

3.19. Under 40 C.F.R. § 745.89(d)(1), a firm must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator.

3.20. On or about September 13, 2018, Respondent was performing the O’Farrell Renovation and was unable to show that certified renovators were performing the renovation

activities, or that all individuals performing renovation activities on behalf of the firm had been trained by a certified renovator if they were not themselves certified renovators.

3.21. Respondent's failure to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator is a violation of 40 C.F.R. § 745.89(d)(1).

COUNT 3

3.22. 40 C.F.R. § 745.85(a)(1) requires firms to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area. The 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.

3.23. On or about September 13, 2018, the O'Farrell Renovation lacked any posted signs that would clearly define the work area and warn persons not involved in the renovation activities to remain outside the work area.

3.24. Respondent's failure to post warning signs is a violation of 40 C.F.R. § 745.85(a)(1).

COUNT 4

3.25. 40 C.F.R. § 745.85(a)(4)(i) requires waste from renovation activities to be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

3.26. The O'Farrell Renovation was permitted under a City of Boise building permit as an interior renovation. On or about September 13, 2018, EPA observed dust and debris from renovation activities, including paint chips, outside of the interior work area at the O'Farrell Renovation.

3.27. Respondent's failure to ensure that waste from renovation activities was contained to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i).

COUNT 5

3.28. 40 C.F.R. § 745.85(a)(4)(ii) requires, at the conclusion of each work day and at the conclusion of the renovation, that waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

3.29. At approximately 8:15 a.m. on September 13, 2018, at the O'Farrell Renovation, EPA observed that piles of construction debris from renovation activities were not stored under or behind any form of containment, enclosure, or barrier.

3.30. Respondent's failure to ensure that at the conclusion of each work day, that waste that was collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris is a violation of 40 C.F.R. § 745.85(a)(4)(ii).

3.31. Under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$40,576 for each such violation, each day such a violation continues.

IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$500 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Maria Tartaglia
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
tartaglia.maria@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to

appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/17/2020

FOR RESPONDENT:



Blake Kafka, Owner
Palmetto Contracting Services, LLC

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI Digitally signed by EDWARD KOWALSKI
Date: 2020.04.03 11:58:03 -07'00'

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2020-0072
)	
PALMETTO CONTRACTING)	FINAL ORDER
SERVICES, LLC,)	
)	
Meridian, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2020.

Mednick,
Richard

Digitally signed by
Mednick, Richard
Date: 2020.04.13
12:17:52 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Palmetto Contracting Services, LLC, Docket No.: TSCA-10-2020-0072**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Danielle Meinhardt
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Blake Kafka
Owner
Palmetto Contracting Services, LLC
bkafka503@gmail.com

DATED this _____ day of _____, 2020.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10