

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

2013 JUL 16 AM 11:08

BEFORE THE ADMINISTRATOR

)	
In the Matter of)	
)	Docket No. TSCA-07- 2013-0012
Nezerka Enterprises LLC d/b/a)	
Certa Pro Painters of Shawnee Mission,)	
Kansas)	
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Nezerka Enterprises LLC d/b/a Certa Pro Painters of Shawnee Mission, Kansas (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 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 E, *Lead-Based Paint Renovation, Repair and Painting Rule*, (RRP Rule) promulgated 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 Nezerka Enterprises LLC d/b/a Certa Pro Painters of Shawnee Mission, Kansas, a business/LLC under the laws of the state of Kansas.

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 Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. On June 1, 1998, EPA promulgated information distribution and record keeping requirements 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. On April 22, 2008, 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-Based Paint Renovation, Repair and Painting Rule* (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686 and 2687. The regulations aimed to protect the public from lead-based paint hazards associated with renovation, repair, and painting activities. Under the RRP Rule each person or firm 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. Firms and individuals performing renovation, repair, and painting projects for compensation that disturb lead-based paint must use certified renovators who follow specific work practices to prevent lead contamination. Prior to the start of renovation, the firm or individual performing the renovation must provide the owners and occupants of the target housing units subject to regulated renovation, repair, and/or painting a copy of the U.S. Environmental Protection Agency-approved *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet, and maintain written acknowledgment that the pamphlet has been provided.

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 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.

9. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

10. EPA promulgated regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. These regulations are found within 40 C.F.R. Part 745, Subpart E.

11. The term *target housing* means 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. 15 U.S.C. § 2681(17).

12. The term *renovation* means 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 following: 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. 40 C.F.R. § 745.83.

13. The term *firm* means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State Tribal, or local government agency; or a nonprofit organization. 40 C.F.R. § 745.83

14. 40 C.F.R. § 745.89(a)(1) states that firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

15. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

16. Pursuant to 40 C.F.R. § 745.86(b)(6), certain records must be retained including, but not limited to, documentation of compliance with the work practice requirements, including documentation that a certified renovator was assigned to the project.

17. The “Work Practice Standards” that must be followed by firms performing renovations on target housing are set forth at 40 C.F.R. § 745.85. The Work Practice Standards include, but are not limited to:

a. Firms must provide pamphlet to the owner of the multi-housing unit per 40 C.F.R. § 745.84(b)(1).

b. Firms must notify each unit of multi-family housing and make pamphlet available per 40 C.F.R. § 745.84(b)(2).

c. Firm must retain all records necessary to demonstrate compliance for a period of three years following completion of renovation activities per 40 C.F.R. § 745.86(a).

d. Firms must cover the ground with plastic before beginning the renovation

per 40 C.F.R. § 745.86(a)(2)(ii)(C).

e. Firms must clean work area per 40 C.F.R. § 745.85(a)(5).

18. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 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).

19. 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

20. Respondent is, and at all times referred to herein was, a “firm” and a “person” within the meaning of TSCA.

21. Respondent is a renovation firm performing renovation, repair, and painting work on target housing.

22. On January 17, 2012, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the United States Environmental Protection Agency, Region 7 conducted a record keeping inspection of 103 W. 51st St. in Kansas City, Missouri (hereinafter, “the Property”), where Respondent had conducted “renovations”, as defined by C.F.R. § 745.83, for compensation.

On October 25, 2011, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the United States Environmental Protection Agency, Region 7 conducted a work site inspection of 103 W. 51st St. in Kansas City, Missouri (hereinafter, “the Property”), where Respondent was in the process of conducting “renovations”, as defined by C.F.R. § 745.83, for compensation.

23. The Property was constructed before 1978.

24. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

25. At the time of the EPA inspection, the EPA representative observed that, in the course of its renovation of the Property, Respondent failed to cover the ground at renovation per RRP regulations; failed to provide EPA-approved lead hazard information pamphlet to owner of multi-family housing; failed to give proper notification to each tenant of multi-family housing; and failed to maintain all necessary records per RRP regulations.

Violations

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

Count 1

27. The facts stated in Paragraphs 20 through 25 above are herein incorporated.

28. At the time of the EPA inspection it was discovered that Respondent failed, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10’ beyond the perimeter of the surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10’ of such ground covering per 40 CFR 745.85(a)(2)(ii)(C).

29. Respondent’s failure to perform the act described 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 2

30. The facts stated in Paragraphs 20 through 25 above are herein incorporated.

31. At the time of the EPA inspection it was discovered that Respondent failed to provide the owner of the multi-family housing with the EPA-approved lead hazard information pamphlet per 40 CFR 745.84(b)(1).

32. Respondent's failure to perform the act described 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 3

33. The facts stated in Paragraphs 20 through 25 above are herein incorporated.

34. At the time of the EPA inspection it was discovered that Respondent failed to notify in writing, or ensure written notification of each unit of the multi-family housing and make the pamphlet available upon request prior to the start of the renovation per 40 CFR 745.84(b)(2).

35. Respondent's failure to perform the act described 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 4

36. The facts stated in Paragraphs 20 through 25 above are herein incorporated.

37. At the time of the EPA inspection it was discovered that Respondent and failed to retain all records necessary to demonstrate compliance for a period of 3 years following

completion of the renovation activities per 40 CFR 745.86(a).

38. Respondent's failure to perform the act described 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.

Section V

Consent Agreement

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

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

41. 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.

42. 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.

43. 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, Subpart E.

44. 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.

45. The effect of settlement described in Paragraph 46 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 43 of this Consent Agreement and Final Order.

46. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of eight-thousand five-hundred ninety-six dollars (\$8,596.00) as set forth in Paragraph 1 of the Final Order. 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. Subpart E alleged in this document.

47. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the 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.

48. Respondent understands that its 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 as stated in Paragraph 47 above 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 VI

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 / Respondents shall pay a civil penalty of eight-thousand five-hundred ninety-six dollars (\$8,596.00) within thirty (30) days of the effective date of this 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, 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

Jennifer Trotter, 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.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7.


5. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT

Nezerka Enterprises LLC d/b/a Certa Pro Painters of Shawnee Mission, Kansas

Date: 6-28-13

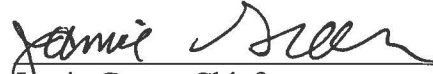
By:



Greg Nezerka
Print Name

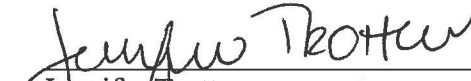
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/10/13



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

Date: 7/8/13



Jennifer Trotter
Office of Regional Counsel

IT IS SO ORDERED.

Date: 7-16-13

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency

IN THE MATTER OF Nezerka Enterprises LLC d/b/a Certa Pro Painters of Shawnee Mission,
Kansas, Respondent
Docket No. TSCA-07-2013-0012

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:

trotter.jennifer@epa.gov

Copy by First Class Mail to Respondent:

Greg Nezerka
Nezerka Enterprises LLC d/b/a
Certa Pro Painters of Shawnee Mission, KS
6505 East Frontage Road, Suite 8
Merriam, Kansas 66202

Dated: 7/17/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7