

U. S. ENVIRONMENTAL PROTECTION AGENCY 2013 SEP 25 AM 9: 47
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:

**Ritchie Enterprises, Inc.
d/b/a Puroclean Emergency
Restoration Services
1514 Watson Road
Sullivan, MO 63080**

Respondent

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) **Docket No. TSCA-07-2013-0023**
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CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Ritchie Enterprises, Inc. d/b/a Puroclean Emergency Restoration Services (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 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, 406 and 407 of TSCA, 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 of the Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent, Ritchie Enterprises, Inc. d/b/a Puroclean Emergency Restoration Services, is a corporation in good standing under the laws of the state of Missouri and is authorized to do business in the state of Missouri. 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, training and certification 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 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 has 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 (RRP Rule), and were promulgated pursuant to Section 406 of TSCA, 15 U.S.C. § 2686.

11. 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.

12. 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.

13. 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 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.

14. 40 C.F.R. § 745.89 sets forth the regulations for certification of firms that perform renovations for compensation. These regulations, promulgated pursuant to section 402 of TSCA, 15 U.S.C. § 2682, require that firms that perform renovations for compensation must apply to EPA for certification in order to perform renovations or dust sampling.

15. 40 C.F.R. § 745.84(a)(1) sets forth the regulations for information distribution requirements. These regulations require that no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA, 15 U.S.C. § 2686.

16. 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*. These regulations were promulgated pursuant to section 406(a) of TSCA, 15 U.S.C. § 2686. Among these “Work Practice Standards” is 40 C.F.R. § 745.85(a)(3)(ii), which prohibits the use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation.

17. 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).

18. 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

19. 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.

20. On December 15, 2011, representatives of EPA Region 7 conducted an inspection concerning renovations for compensation that were performed by Respondent at 4264 Hwy KK,

New Haven, Missouri; 802 Commercial, Mineral Point, Missouri; and 258 Donald, Sullivan, Missouri. This inspection was carried out pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610. These buildings are all residential housing units that meet the definition of *target housing* under 15 U.S.C. § 2681(17).

21. During the EPA inspection of and EPA's ensuing investigation concerning the renovation at property located at 4264 Hwy KK, New Haven, Missouri, EPA representatives discovered that Respondent engaged in renovation of the residence for compensation from February 28, 2011 to April 21, 2011. In the course of its renovation of this building, the Respondent did as follows:

(a) Respondent failed to apply to EPA for certification in order to perform renovations or dust sampling in violation of 40 C.F.R. § 745.89.

(b) Respondent failed to provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA, 15 U.S.C. § 2686, in violation of 40 C.F.R. § 745.84(a)(1).

(c) Respondent used a machine designed to remove paint or other surface coatings through high speed sanding without shrouds or containment systems, and which was not equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation, in violation of 40 C.F.R. § 745.85(a)(3)(ii).

(d) After the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. § 745.86.

22. During the EPA inspection and investigation concerning the renovation at

property located at 802 Commercial, Mineral Point, Missouri, EPA representatives discovered that Respondent engaged in renovation of the residence for compensation from November 17-30, 2011. After the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. § 745.86.

23. During the EPA inspection and investigation concerning the renovation at property located at 258 Donald, Sullivan, Missouri, EPA representatives discovered that Respondent engaged in renovation of the residence for compensation from May 25-31, 2011. After the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. § 745.86.

Section V
Violations

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

Count I

24. Concerning the renovation at property located at 4264 Hwy KK, New Haven, Missouri, that took place from February 28, 2011 to April 21, 2011, Respondent failed to apply to EPA for certification in order to perform renovations or dust sampling in violation of 40 C.F.R. § 745.89.

25. Respondent's failure to perform this 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

26. Concerning the renovation at property located at 4264 Hwy KK, New Haven, Missouri, that took place from February 28, 2011 to April 21, 2011, Respondent failed to provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA, 15 U.S.C. § 2686, in violation of 40 C.F.R. § 745.84(a)(1).

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. Concerning the renovation at property located at 4264 Hwy KK, New Haven, Missouri, that took place from February 28, 2011 to April 21, 2011, Respondent used a machine designed to remove paint or other surface coatings through high speed sanding without shrouds or containment systems, and which was not equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation, in violation of 40 C.F.R. § 745.85(a)(3)(ii).

29. Respondent's action 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 IV

30. Concerning the renovation at property located at 4264 Hwy KK, New Haven, Missouri, that took place from February 28, 2011 to April 21, 2011, after the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. §

745.86.

31. 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

32. Concerning the renovation that took place at 802 Commercial, Mineral Point, Missouri from November 17-30, 2011, after the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. § 745.86.

33. Respondent's failure to perform the action 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 VI

34. Concerning the renovation that took place at 258 Donald, Sullivan, Missouri, from May 25-31, 2011, after the renovation was complete, Respondent failed to retain all records necessary to demonstrate compliance with the RRP for 3 years following completion of the renovation activity, in violation of 40 C.F.R. § 745.86.

35. Respondent's failure to perform the action 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.

Section VI
Consent Agreement

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

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

38. 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.

39. 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.

40. 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.

41. 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.

42. Payment of the 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.

43. Respondent understands that his failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order of 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. Within 60 days from the effective date of this CAFO, Respondent shall pay a civil penalty of Thirty Thousand Dollars (\$30,000). 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
RITCHIE ENTERPRISES, INC.**

Date: Sept. 13, 2013


by 
President
TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/23/2013

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

Date: 9/20/2013

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

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

Date: 9-25-13



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

IN THE MATTER OF Ritchie Enterprises, Inc. D/b/a Puroclean Emergency Restoration
Services, Respondent
Docket No. TSCA-07-2013-0023

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 First Class Mail to Respondent:

Daniel L. Massey, Esq.
The Massey Law Firm, LLC
Two CityPlace Drive, Suite 200
St. Louis, Missouri 64141

Dated: 9/25/13

A handwritten signature in blue ink that reads "Kathy Robinson". The signature is written in a cursive style and is positioned above a horizontal line.

Kathy Robinson
Hearing Clerk, Region 7