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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Hal Myers Construction, Inc.)	Docket No. TSCA-07-2017-0143
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA), Region 7 and Hal Myers Construction, Inc. (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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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). Pursuant to Section 16(a)(2)(C), the Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed (under this subsection).

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*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.

4. Respondent is Hal Myers Construction, Inc., a company doing business in the state of Missouri.

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. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (Renovation, Repair, and Painting Rule). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standards for renovations that disturb lead-based paint in target housing and child-occupied facilities, and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The requirements set forth in the regulations at 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R. § 745.82.

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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.

11. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as 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.

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

14. The regulation at 40 C.F.R. § 745.84(a)(1) provides 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 approved pamphlet.

15. The regulation at 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82.

16. The regulation at 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.

17. The regulation at 40 C.F.R. § 745.81(a)(4)(ii) states that all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. 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) Pursuant to 40 C.F.R. § 745.85(a)(4)(i) waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal; and

- (b) Pursuant to 40 C.F.R. § 745.85(a)(4)(ii) at the conclusion of each work day and at the conclusion of the renovation, 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.

18. The regulation at 40 C.F.R. § 745.89(d)(2) provides that 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 §745.90.

19. The regulation at 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of three (3) years following completion of the renovation.

20. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal 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. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

21. 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 \$38,114 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409, 15 U.S.C. § 2689.

General Factual Allegations

22. On or about January 15, 2016, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA attempted to conduct a work practice inspection to evaluate Respondent's compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (EPA inspection). A subpoena was issued at that time. The subpoena response was received by EPA on January 25, 2016.

23. Respondent is, and at all times referred to herein was, a company doing business in the state of Missouri.

24. Respondent, at all times referred to herein, was a "person" and "firm" as defined by 40 C.F.R. § 745.83.

25. At the time of the EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was engaged in "renovation" of the Properties as defined by 40 C.F.R. § 745.83.

26. At all times relevant to this Consent Agreement and Final Order, Respondent's renovation was a "renovation for compensation" per 40 C.F.R. § 745.82(a).

27. At all times relevant to this Consent Agreement and Final Order, the Properties were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Properties at 17 Lindenwood Lane in St. Joseph, Missouri was built in 1952; 99 N. 1st Street in Gower, Missouri was built prior to 1978; and 638 Leroy in Cosby, Missouri was built prior to 1978.

28. At all times relevant to this Consent Agreement and Final Order, the Properties were not owned by Respondent.

29. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred at the Properties.

Allegations of Violation

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

Count 1

31. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

32. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

33. The EPA inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Properties.

34. Respondent’s failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Properties is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2, 3, and 4

35. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

36. Pursuant to 40 C.F.R. § 745.84(a)(1), prior to renovation activities but 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 approved pamphlet.

37. The EPA inspection revealed that Respondent failed to provide the EPA approved pamphlet to the owner of the unit prior to renovations performed by the firm at the 17 Lindenwood Lane; 99 N. 1st Street; and 638 Leroy properties.

38. Respondent's failure to provide the owner of the unit with the EPA approved pamphlet is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5,6, and 7

39. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

40. Pursuant to 40 C.F.R. § 745.89(d)(2), 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 §745.90.

41. The EPA inspection revealed that Respondent failed to ensure a certified renovator was assigned to each renovation performed by the firm at the 17 Lindenwood Lane; 99 N. 1st Street; and 638 Leroy properties.

42. Respondent's failure to ensure that a certified renovator is assigned to each renovation performed by the firm is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 8, 9 and 10

43. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

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

45. The EPA inspection revealed that Respondent failed to retain and make available to EPA all records necessary to demonstrate compliance with this subpart for a period of three (3) years following completion of the renovations for the 17 Lindenwood Lane; 99 N. 1st Street; and 638 Leroy properties.

46. Respondent's failure to retain and make available to EPA all records necessary to demonstrate compliance with this subpart for a period of three (3) years following completion of the renovation is a violation of 40 C.F.R. § 745.86(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 11

47. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

48. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(i) requires firms to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal.

49. The EPA inspection revealed that Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal at 17 Lindenwood Lane as required by 40 C.F.R. § 745.85(a)(4)(i).

50. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 12

51. The facts stated in Paragraphs 22 through 29 above are herein incorporated.

52. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(ii) requires firms, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities is 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.

53. The EPA inspection revealed that Respondent failed to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been 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 at 17 Lindenwood Lane as required by 40 C.F.R. § 745.85(a)(4)(ii).

54. Respondent's failure to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been 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) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

55. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth above;

- (b) neither admits nor denies the specific factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified in this Agreement;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the alleged violations of law set forth in this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

56. 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.

Penalty Payment

57. EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), and has determined that the appropriate penalty for the violation(s) is \$40,320.00. This penalty has been adjusted to reflect Respondent's size of business. However, pursuant to the statutory requirement that EPA consider a Respondent's ability to pay, Respondent has demonstrated that it is unable to pay any penalty in this matter. Therefore, Respondent will pay \$0.00. Because of Respondent's inability to pay the penalty, Complainant conditionally agrees to resolve the claims alleged herein.

Conditions

58. Respondent certifies by the signing of this Consent Agreement and Final Order that it completed EPA-accredited renovator training to become a certified renovator and has received EPA firm certification, and that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

Effect of Settlement and Reservation of Rights

59. Payment of the 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, Subpart E, alleged in this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the TSCA or other applicable law.

60. The effect of settlement described in Paragraph 59 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 58 of this Consent Agreement and Final Order.

61. Complainant reserves the right to enforce the terms and conditions of the Consent Agreement and Final Order.

General Provisions

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

63. By signing this Agreement, the undersigned representative of Complainant certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

64. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

65. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
HAL MYERS CONSTRUCTION, INC.

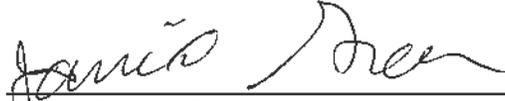
Date: 5-18-17

By: Hal Myers

Hal Myers OWNER
Print Name and Title

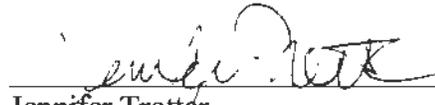
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/28/2017



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

Date: 7-26-17



Jennifer Trotter
Office of Regional Counsel

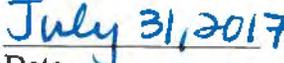
FINAL ORDER

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.


Karina Borromeo
Karina Borromeo
Regional Judicial Officer


July 31, 2017
Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, ~~return receipt requested~~, a true and correct copy of the original Consent Agreement and Final Order to the following: First Class Mail RR

Mr. Hal Myers
Hal Myers Construction, Inc.
12820 SE Bigham Road
Easton, Missouri 64443

Dated this 1st th day of August, 2017.

Kathy Robinson
Name