

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

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Walz Construction and Remodeling)
St. Louis, Missouri) Docket No. TSCA-07-2010-0021
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Walz Construction and 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 Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

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, Residential Property Renovation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Walz Construction and Remodeling, 10905 Mueller Road, St. Louis, Missouri 63135.

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. Section 406(b) of the law directed EPA to issue regulations requiring that compensated renovators distribute an approved lead information pamphlet to owners and occupants of housing constructed before the phaseout of residential lead-based paint use in 1978 before beginning renovations. The regulations became effective on June 1, 1999, and are codified at 40 C.F.R. Part 745, Subpart E. The failure or refusal to comply with the regulations is a violation of Section 409 of TSCA.

Alleged Violations

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

7. Respondent is, and at all times referred to herein was, a "person" within the meaning of TSCA.

8. Respondent is a "renovator" who performed "renovations" as defined by 40 C.F.R. § 745.83 for compensation.

9. Respondent performed renovations on property at 922 Curran Avenue, St. Louis, Missouri 63122. The property was constructed before 1978.

10. The property is "target housing" as defined by 40 C.F.R. § 745.103.

11. Respondent failed to provide the owner and/or occupant of 922 Curran Avenue, St. Louis, Missouri, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgment or certificate of mailing prior to the commencement of renovation activities at the property.

12. Respondent's failure to perform the acts indicated in Paragraph 11, above, are violations of 40 C.F.R. § 745.84(a)(1) and 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.

CONSENT AGREEMENT

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

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

15. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

17. Each signatory of this agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

18. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

19. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$1,000 to be paid within thirty (30) days of the effective date of the Final Order.

20. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 19, above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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 charged 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.

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 shall pay a mitigated civil penalty of \$1,000 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the 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
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

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

RESPONDENT
WALZ CONSTRUCTION AND REMODELING

Date: 10-9-10


By: Michael Walz

MICHAEL WALZ
Print Name

Owner
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/14/10

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

Date: 10/13/10

By: 
Kent Johnson, Senior Assistant Regional Counsel
Office of Regional Counsel

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

Date: Oct 19, 2010



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Walz Construction and Remodeling, Respondent
Docket No. TSCA-07-2010-0021

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael Walz
Walz Construction and Remodeling
10905 Mueller Road
St Louis, Missouri 63135

Dated: 10/19/10


Kathy Robinson
Hearing Clerk, Region 7