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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	TSCA-06-2014-6130
	§	
MANHATTAN CONSTRUCTION	§	
COMPANY AND	§	
ARK WRECKING COMPANY	§	COMPLAINT
TULSA, OKLAHOMA	§	AND
	§	CONSENT AGREEMENT AND
RESPONDENTS	§	FINAL ORDER

I. STATEMENT OF AUTHORITY

1. This proceeding for the assessment of civil penalties is initiated by the United States Environmental Protection Agency (EPA) pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615, against Manhattan Construction Company and Ark Wrecking Company, both of Tulsa, Oklahoma (hereinafter Respondents). Section 16 of TSCA authorizes the Administrator of EPA to issue a Complaint whenever the Administrator has information that any person has violated or is violating any requirement of Section 15 of TSCA.

2. The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6, the person to whom authority has been delegated to issue such Complaints in the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

II. PRELIMINARY STATEMENT

3. Complainant and Respondents agree that settlement of this matter is in the public interest, and that entry of this Complaint and Consent Agreement and Final Order (Complaint and CAFO) without further litigation is the most appropriate means of resolving this matter.

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4. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of this Complaint and CAFO; however, Respondents neither admit nor deny the specific factual allegations and conclusions of law contained in this Complaint and CAFO. The Complaint states a claim upon which relief can be granted.

5. As part of this settlement, Respondents explicitly waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waive all defenses which have been raised or could have been raised to the claims set forth in this Complaint and CAFO.

6. As part of this settlement, Respondents waive any right to contest the allegations in the Complaint and any right to appeal the Final Order set forth herein.

7. Respondents consent to the issuance of this Complaint and CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this Complaint and CAFO.

8. Compliance with all the terms and conditions of this Complaint and CAFO shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in this Complaint and CAFO.

9. Each party to this action shall bear its own costs and attorney fees.

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10. Nothing in this Complaint and CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

11. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

12. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. §§ 2601 et seq. by adding "Subchapter IV – Lead Exposure Reduction."

13. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), required the Administrator of EPA to promulgate regulations to address renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings which may create a risk of exposure to dangerous levels of lead.

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

15. On June 1, 1998, pursuant to 15 U.S.C. § 2686, EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation (Pre-Renovation Education Rule, or PRE Rule), which was subsequently amended and recodified, pursuant to 15

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U.S.C. § 2682 on April 22, 2008, at 40 C.F.R. Part 745, Subpart E, Residential Property
Renovation (Renovation, Repair, and Painting Program, or RRP Rule).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. Respondents are Manhattan Construction Company of 5601 South 122nd East Avenue, Tulsa, Oklahoma 74146-6912 (Manhattan) and Ark Wrecking Company of 1800 S. 49th West Avenue, Tulsa, Oklahoma 74107-2202 (AWC).

17. Respondents are both a "person" as that term is defined in 40 C.F.R. § 745.83.

18. Respondents are both a "firm" as that term is defined in 40 C.F.R. § 745.83.

19. Respondents performed a "renovation" as that term is defined in 40 C.F.R. § 745.83, when they performed a renovation for the purpose of converting a building, or part of a building into a child-occupied facility.

20. "Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA and defined in 40 C.F.R. § 745.83.

21. On or about March 7, 2012, EPA conducted an inspection of Manhattan's records to determine compliance with the RRP Rule.

22. On or about March 7, 2012, EPA Inspector Lawrence Stranne presented his EPA Inspector credentials to Mr. Scott Marsh, representative of Respondent, Manhattan Construction Company.

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23. On or about March 7, 2012, Mr. Marsh signed the EPA Notice of Inspection, thereby certifying voluntary consent for EPA to review and make copies of any documents relating to EPA's ability to determine compliance with the RRP Rule.

24. On or about May 24, 2012, EPA conducted an inspection of AWC's records to determine compliance with the RRP Rule.

25. On or about May 24, 2012, EPA Inspector Lawrence Stranne presented his EPA Inspector credentials to Mr. Ray Morgan, representative of AWC.

26. On or about May 24, 2012, Mr. Morgan signed the EPA Notice of Inspection, thereby certifying voluntary consent for EPA to review and make copies of any documents relating to EPA's ability to determine compliance with the PRE Rule.

27. On or about January 31, 2011, Respondents jointly performed a renovation of a child-occupied facility at 1740 West 41st Street, Tulsa, Oklahoma 74107-6814.

28. On August 16-17, 2010, a certified LBP inspector/risk assessor performed a LBP testing report for 1740 West 41st Street, Tulsa, Oklahoma 74107-6814.

29. The LBP Report showed that approximately 766 building components were tested for the presence of lead and approximately 40% of the components tested positive for the presence of lead at a level deemed to be a potential health hazard.

30. Pursuant to 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in a child-occupied facility. On or about April 29, 2011, Respondents performed a renovation of a

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child-occupied facility, without certification from EPA. Therefore, Respondents violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

31. Pursuant to 40 C.F.R. § 745.84(c)(1)(i), no more than 60 days prior to the date of renovation, a firm is required to provide the owner of the building with the lead hazard information pamphlet. Respondents failed to provide the owner of the building with the pamphlet prior to the renovation. Therefore, Respondents violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.84(c)(1)(i).

32. Pursuant to 40 C.F.R. § 745.89(d)(1), a firm performing renovations 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 in accordance with § 745.90. Respondents failed to ensure that all individuals performing renovation activities on behalf of the firm were either certified renovators or were trained by a certified renovator in accordance with § 745.90 for the renovation listed in Paragraph 27. Therefore, Respondents violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.89(d)(1).

33. Pursuant to 40 C.F.R. § 745.89(d)(2), a firm 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. Respondents failed to ensure that a certified renovator was assigned to the renovation listed in Paragraph 27 and that the certified renovator discharged all of the certified renovator responsibilities identified in § 745.90.

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Therefore, Respondents violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
§ 745.89(d)(2).

IV. TERMS OF SETTLEMENT

34. For the reasons set forth above, Respondents have agreed to pay a civil penalty in the amount of \$24,038.00.

35. Payment shall be made by one of the following methods within 30 days after the effective date of this Complaint and CAFO:

a. By mailing a bank check, a cashier's check, or certified check, payable to "Treasurer of the United States," to the following address:

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

b. By wire transfers to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

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c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-4087

d. By credit card payments to: <https://www.pay.gov>

Enter sfo 1.1 in the search public forms field

The case name and docket number (*In the Matter of Manhattan Construction Company and Ark Wrecking Company*, Docket No. TSCA-06-2014-6130) shall be clearly marked on the check or other method of payment to ensure credit for payment.

36. Respondents shall send simultaneous notices of payments, including copies of the check or other proofs of payment, to each of the following:

- a. Ms. Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- b. Ms. Pat Weatherly (6EN-HM)
TSCA Enforcement Officer
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- c. Mr. Jay Przyborski (6RC-ER)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to this request will ensure proper credit is given when payments are received.

37. Respondents agree not to claim nor attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this Complaint and CAFO will begin to accrue 30 days after the effective date of the Complaint and CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

39. If EPA does not receive payment within 30 days of the due date, EPA will also impose a late payment handling charge of \$15.00 for each subsequent 30-day period. Finally, EPA will apply a six percent per annum penalty on any principal amount not paid within 90 days of the due date. Other penalties for failure to make a payment may also apply.

V. PARTIES BOUND

40. The provisions of this Complaint and CAFO shall apply to and be binding upon the Parties to this action, their officers, directors, agents, employees, successors, and assigns.

VI. MODIFICATIONS

41. The terms, conditions, and compliance requirements of this Complaint and CAFO may not be modified or amended except as otherwise specified in this Complaint and CAFO, or upon the written agreement of EPA and Respondents, and such modification or amendment being filed with the Regional Hearing Clerk.

VII. RETENTION OF ENFORCEMENT RIGHTS

42. EPA does not waive any rights or remedies available to EPA for any other violations by Respondents of Federal or State laws, regulations, or permitting conditions unrelated to matters addressed in this Complaint and CAFO.

VIII. RECORD PRESERVATION

43. Respondents shall preserve, during the pendency of this Complaint and CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this Complaint and CAFO regardless of any document retention policy to the contrary.

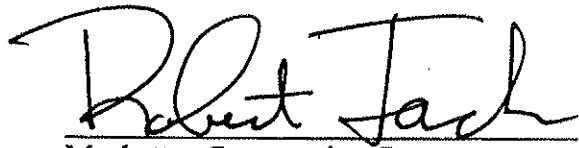
IX. COSTS

44. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondents may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this Complaint and CAFO. Furthermore, Respondents specifically waive their right to seek reimbursement of their costs and attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER**

FOR RESPONDENTS:



Manhattan Construction Company

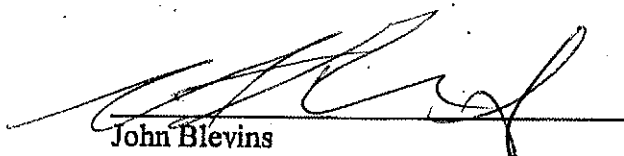
March 25, 2014
Date



Ark Wrecking Company

3-27-14
Date

FOR COMPLAINANT:



John Blevins
Director
Compliance Assurance and
Enforcement Division

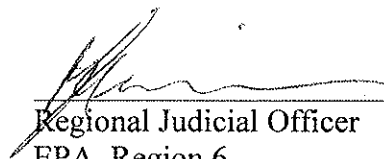
4-9-14
Date

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This Final Order shall become effective upon filing with the Regional Hearing Clerk as stated in 40 C.F.R. § 22.31(b).

Issuance Date: 4-17-14



Regional Judicial Officer
EPA, Region 6

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CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of April, 2014, the original of the foregoing Consent Agreement and Final Order, Docket No. TSCA-06-2014-6130, was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

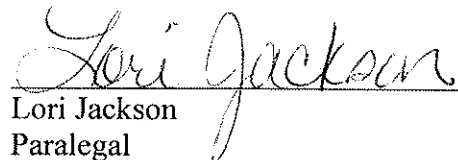
CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7003 0500 0003 0875 2138

Caitlin Murphy
Barrow & Grimm, P.C.
110 W. Seventh, Suite 900
Tulsa, Oklahoma 74119-1044

Copies were hand-delivered to:

Jay Przyborski (6RC-ER)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Ms. Pat Weatherly (6EN-HM)
TSCA Enforcement Officer
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733


Lori Jackson
Paralegal