

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

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BEFORE THE ADMINISTRATOR

In the Matter of:

RA Construction KC, LLC,

Respondent.

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Docket. No. TSCA-07-2016-0008

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7, ("EPA") and RA Construction KC, LLC, ("Respondent") have agreed to a settlement of this action before the 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).

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 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.

Section II

Parties

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

4. Respondent is RA Construction KC, LLC, a limited liability company in good standing under the laws of the State of Missouri.

Section III

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, 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 through 412, 15 U.S.C. §§ 2681 to 2692.

6. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), on June 1, 1998, EPA promulgated information distribution and recordkeeping requirements codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard Education Before Renovation of Target Housing (“Pre-Renovation Education Rule”). Pursuant to Sections 402, 406, and 407, 15 U.S.C. §§ 2682, 2686 and 2687, on April 22, 2008, EPA amended and re-codified the Pre-Renovation Education Rule’s 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”). These new regulations aimed to protect the public from lead-based paint hazards associated with renovation, repair and painting activities. Under the RRP Rule, each

facility must be trained and certified by an EPA-accredited training provider to conduct renovation, remodeling, and/or painting activities. Firms and individuals performing for compensation renovations, repair, and painting activities that disturb lead-based paint must use certified renovators who follow specific work practices to prevent lead contamination. Prior to the start of renovations, the firm or individual performing the renovation must provide the owners and/or occupants of the regulated housing units a copy of the EPA-approved pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, and must obtain written acknowledgment that the owners and/or occupants received the pamphlet.

7. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing 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 governing 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 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 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. Pursuant to 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1), 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. § 745.84(a)(1), firms performing renovations must provide the owners and/or occupants of the regulated housing units a copy of the EPA-approved pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* prior to the start of renovations, and must obtain written acknowledgment that the owners and/or occupants received the pamphlet.

16. Pursuant to 40 C.F.R. § 745.86(a) and (b), firms performing renovations must retain all records necessary to demonstrate compliance with the RRP Rule, including, but not limited to, documentation of compliance with the work practice standards contained in 40 C.F.R. § 745.85 and documentation that a certified renovator was assigned to the project.

17. 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 40 C.F.R. § 745.90.

18. Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87(d) provide that failure to comply with any provision of the RRP Rule, 40 C.F.R. Part 745, Subpart E, is a violation that may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

19. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 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 409 of TSCA, 15 U.S.C. § 2689. 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 occur 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. On December 15, 2014, 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 recordkeeping inspection of RA Construction KC, LLC. This inspection revealed that Respondent was a special trade contractor for renovation activities conducted for compensation at 1234 West 67th Terrace in Kansas City, Missouri, (hereinafter, “the Property”) in August 2014.

22. The Property was constructed before 1978.

23. The Property is “target housing” as defined by 15 U.S.C. § 2681(17).

24. At the time of the EPA inspection, Respondent had not applied to EPA for certification to perform renovations, nor was a certified renovator assigned to the renovation of the Property. The EPA representative also observed that, in the course of its renovation of the Property, Respondent did not distribute the EPA-approved pamphlet and failed to maintain records documenting that it complied with work practice standards.

Violations

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

COUNT 1

26. The facts stated in Paragraphs 20 through 24 above are herein incorporated.

27. At the time of the EPA inspection it was discovered that Respondent failed to

apply for and obtain EPA certification prior to commencing the renovation for compensation on the Property, as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

28. Respondent's failure to perform the act described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, therefore Respondent is subject to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 2

29. The facts stated in Paragraphs 20 through 24 above are herein incorporated.

30. At the time of the EPA inspection it was discovered that Respondent failed to provide the owner of the Property with the EPA-approved pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, and failed to obtain written acknowledgment that the owner received the pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

31. Respondent's failure to perform the act described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, therefore Respondent is subject to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 3

32. The facts stated in Paragraphs 20 through 24 above are herein incorporated.

33. At the time of the EPA inspection it was discovered that Respondent failed to retain documentation that renovation activities performed at the Property complied with the work practice standards contained in 40 C.F.R. § 745.85, as required by 40 C.F.R. § 745.86(a) and (b).

34. Respondent's failure to perform the act described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, therefore Respondent is subject to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 4

35. The facts stated in Paragraphs 20 through 24 above are herein incorporated.

36. At the time of the EPA inspection it was discovered that Respondent failed to ensure that a certified renovator was assigned to the renovation at the Property and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2).

37. Respondent's failure to perform the act described above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, therefore Respondent is subject to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Section V

Consent Agreement

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

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

40. 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.

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

42. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

43. 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.

44. The effect of settlement described in Paragraph 45 below is conditioned upon the

accuracy of Respondent's representations to EPA, as memorialized in Paragraph 42 of this CAFO.

45. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of \$1,197 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 the RRP Rule, 40 C.F.R. Part 745, Subpart E, alleged in this document.

46. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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 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.

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act, 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 civil penalty of One Thousand One Hundred and Ninety-Seven Dollars (\$1,197) 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 made 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

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

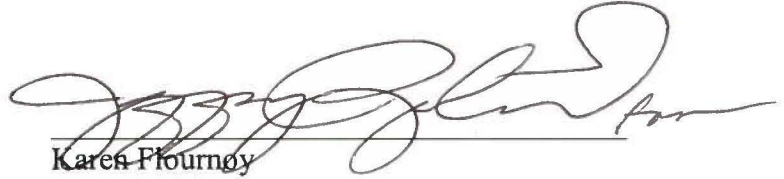
**RESPONDENT:
RA CONSTRUCTION KC, LLC**

Date: 1/27/14

By: Rafael Aguirre
[Signature]
Print Name


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/3/16



Karen Flournoy
Division Director
Water, Wetlands and Pesticides Division

Date: 2/2/2016



Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED.

Date: 2-8-2016

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

IN THE MATTER Of RA Construction KC, LLC, Respondent
Docket No. TSCA-07-2016-0008

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 emailed to Attorney for Complainant:

pessetto.jared@epa.gov

Copy by First Class Mail to Respondent:

Raphael Aguirre
RA Construction KC, LLC
1306 NE Shady Lane Drive
Gladstone, Missouri 64118

Dated: 2/9/16



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7