

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

**In the Matter of** )  
 )  
**ALAN J. ERICKSON,** ) **Docket No. TSCA-07-2007-0019**  
 )  
 )  
**Respondent** )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Alan J. Erickson (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. The Toxic Substances Control Act (TSCA), 15 U.S.C., Sections 2601-2692, governs the use of certain hazardous substances within the United States. Subchapter II of TSCA, 15 U.S.C. Sections 2641-2656, regulates certain aspects of asbestos control and removal within the United States.

3. The term “asbestos-containing material” is defined at 15 U.S.C. Section 2642(4), and means “any material which contains more than 1 percent asbestos by weight.”

4. The term “friable asbestos-containing material” is defined at 15 U.S.C. Section 2642(6), and means “any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which may be crumbled, pulverized, or reduced to powder by hand pressure.”

5. The term “public and commercial building” is defined at 15 U.S.C. Section 2642(10) as “any building which is not a school building, except that term does not include any residential apartment building of fewer than 10 units.”

6. The term “Response Action” is defined at 15 U.S.C. Section 2642(11), and means “methods that protect human health and the environment from asbestos-containing material.”

7. The term “person” is defined at 40 C.F.R. Section 720.3(x), a federal regulation which was promulgated pursuant to TSCA, and the Defendant Alan Erickson meets the definition of “person”.

8. Pursuant to 15 U.S.C. Section 2646(a), a person may not conduct a “response action” with respect to friable asbestos-containing material in a “public or commercial building” unless such person has been accredited by a State under an approved TSCA asbestos accreditation program.

9. 15 U.S.C. Section 2614(1)(D), provides that is unlawful for any person to fail to comply with any requirement of Subchapter II of TSCA, and 15 U.S.C. Section 2615(a) provides for civil penalties of not more than \$25,000 per day, for each day of the violation, for any person who violates a provision of 15 U.S.C. Section 2614.

#### COUNT I

10. On or before early July 2003, Defendant Alan Erickson knowingly and willfully conducted a “response action”, as defined at 15 U.S.C. Section 2642(11), by removing “friable asbestos-containing materials”, as defined at 15 U.S.C. Section 2642(6), from pipes, duct work and structural members from the building located at 705 North Jeffers, North Platte, Nebraska. This building is a “commercial building” under the definition set forth in 15 U.S.C. Section 2642(10).

11. Neither Defendant Alan Erickson, nor anyone else involved with the “response action” described above, was accredited to conduct an asbestos “response action” by any state under an approved TSCA asbestos accreditation program, all in violation of Title 15, United States Code, Section 2614, and thus Respondent is subject to civil penalties under 15 U.S.C. § 2615 (a).

## COUNT II

12. On or about the 14<sup>th</sup> day of July 2003, Defendant Alan Erickson knowingly and willfully conducted a “response action”, as defined at 15 U.S.C. Section 2642(11), by removing “friable asbestos-containing materials”, as defined at 15 U.S.C. Section 2642(6), from pipes, duct work and structural members from the building located at 705 North Jeffers, North Platte, Nebraska. This building is a “commercial building” under the definition set forth in 15 U.S.C. Section 2642(10).

13. Neither Defendant Alan Erickson, nor anyone else involved with the “response action” described above, was accredited to conduct an asbestos “response action” by any state under an approved TSCA asbestos accreditation program, all in violation of Title 15, United States Code, Section 2614, and thus Respondent is subject to civil penalties under 15 U.S.C. § 2615 (a).

## CONSENT AGREEMENT

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

15. Respondent neither admits nor denies the violations of TSCA, as set forth above.

16. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

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

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 Subchapter II of TSCA, 15 U.S.C. Sections 2641-2656, and the regulations there under.

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 \$2,000 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 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.

**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 \$2,000 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:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> 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**

Date: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Alan J. Erickson", written over a horizontal line.

Alan J. Erickson

Date: 3/17/07

By: Jamie Green  
Jamie Green, Chief  
Toxics and Pesticides Branch

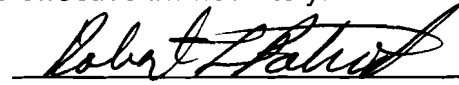
Date: March 15, 2007

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



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

Date: March 26, 2007



ROBERT L. PATRICK  
Regional Judicial Officer  
EPA, Region 7

IN THE MATTER OF Alan J. Erickson, Respondent  
Docket No. TSCA-07-2007-0019

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:

Raymond C. Bosch  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Matthew F. Heffron  
Fitzgerald, Schorr, Barmettler & Brennan, P.C.  
13220 California Street, Suite 400  
Omaha, Nebraska 68154-5228

Dated: 3/28/07

  
Kathy Robinson  
Hearing Clerk, Region 7