



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DENVER, CO 80202-1129
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February 10, 2021
10:51 AM

Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: TSCA-08-2021-0003

IN THE MATTER OF:)
)
VIVAX SYSTEMS INC.) FINAL ORDER
dba VIVAX PRO PAINTING)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 10th DAY OF February, 2021.

KATHERIN
HALL

Digitally signed by
KATHERIN HALL
Date: 2021.02.10 10:50:12
-07'00'

Katherin E. Hall
Regional Judicial Officer

February 10, 2021

10:51 AM

Received by

EPA Region VIII

Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. TSCA-08-2021-0003

IN THE MATTER OF:

Vivax Systems Inc.
dba Vivax Pro Painting
1050 Yuma Street
Denver, Colorado 80204

Respondent.

CONSENT AGREEMENT

Complainant, the authorized representative of the United States Environmental Protection Agency (EPA), and Respondent, Vivax Systems Inc., dba Vivax Pro Painting (collectively the Parties), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Consent Agreement is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615 and 2689, and the regulations promulgated under TSCA Subchapter IV, set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. "Target housing" means any housing constructed prior to 1978, except for 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).

6. "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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. EPA may assess a civil penalty of up to \$41,056 for each violation of section 409. 15 U.S.C. § 2615(a)(1), 40 C.F.R. part 19, 85 Fed. Reg. 83818, 83820 (Dec. 23, 2021).

III. RESPONDENT

8. Respondent is a company doing business in the State of Colorado.
9. Respondent is a "person" for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a "firm" as defined by 40 C.F.R. § 745.83.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. On September 16, 2019, an authorized representative of the EPA inspected Respondent's jobsite at 323 South Corona Street, Denver, Colorado, to determine compliance with the RRP Rule.
12. The jobsite is a residential property constructed prior to 1978 and is "target housing" as the term is defined in 15 U.S.C. § 2681(17).
13. Respondent performed a "renovation," as the term is defined in 40 C.F.R. § 745.83, by scraping paint from the exterior of the home in preparation for painting.

Count I

14. The RRP Rule requires that firms performing renovations on target housing post signs clearly defining the work area and warning occupants and other persons to remain outside of the work area, pursuant to 40 C.F.R. § 745.85(a)(1).
15. At the time of the inspection, Respondent had not posted signs defining the work area, in violation of 40 C.F.R. § 745.85(a)(1).
16. Respondent's failure to post signs constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

17. Firms performing renovations on target housing are required, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C).
18. At the time of the inspection, the EPA observed that, in part of the work area, the ground was covered with a canvas material that did not extend 10 feet beyond the perimeter of surfaces undergoing renovation, allowing paint chips to fall directly to the ground.
19. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

20. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of a renovation, pursuant to 40 C.F.R. § 745.86(a).
21. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation.
22. Respondent failed to retain adequate documentation that a certified renovator performed the post-renovation cleaning verification at the jobsite.
23. Respondents' failure to retain documentation that a certified renovator performed the post-renovation cleaning verification constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

V. SETTLEMENT

24. The Parties agree that settlement of this matter is in the public interest, and the Parties agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
25. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
26. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to

the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.

27. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA, having considered the size of Respondent's business, the nature, circumstances, extent and gravity of the violations alleged, and other relevant factors, has determined that a civil penalty of eight thousand dollars (\$8,000) is appropriate to settle this matter.
28. Respondent consents and agrees to pay a civil penalty in the amount of eight thousand dollars (\$8,000) in the manner described below.
29. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
30. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any commercial carrier or signed receipt confirmation:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If sent by wire transfer: Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: U.S. Environmental Protection Agency

Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

U.S. Treasury Contact Information:
REX (Remittance Express): 866-234-5681

Online debit and credit card payment:

www.Pay.gov
Enter "sfo 1.1" in the form search box. Open form and complete required fields.

31. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek	and	Melissa Haniewicz
U.S. EPA Region 8 (8ENF-AT-TP)		Regional Hearing Clerk (8RC)
Technical Enforcement Program		Haniewicz.Melissa@epa.gov
Jendrek.Kristin@epa.gov		

32. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
33. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;

- b. Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
34. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

VI. GENERAL PROVISIONS

35. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
36. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the Parties, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
37. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both Parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
38. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
39. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
- a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;

- b. Claims based on criminal liability; and,
 - c. Claims based on any other violations of the Act or federal or state law.
40. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
 41. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
 42. Each party to this action shall bear its own costs and attorney fees, if any.
 43. The Parties agree that this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement and any signature page may be transmitted electronically (*e.g.*, a PDF file).
 44. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
 45. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which the Final Order is filed approving this Consent Agreement.
 46. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: eakins.shaula@epa.gov (for Complainant), and jeremiah@vivaxpros.com (for Respondent).

The foregoing Consent Agreement In the Matter of Vivax Systems Inc. is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

**DAVID
COBB**

Digitally signed by
DAVID COBB
Date: 2021.02.05
09:27:55 -07'00'

Date: _____

By: _____
David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division
For the Complainant.

VIVAX SYSTEMS INC.,

Respondent.

Date: 2/5/2021

By:  _____

Printed Name: Chelsea Speer

Title: VP Finance

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **VIVAX SYSTEMS INC.; DOCKET NO.: TSCA-08-2021-0003** was filed with the Regional Hearing Clerk on February 10, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney, and sent via certified receipt email on February 10, 2021, to:

Respondent

Jeremiah Owen
President
Vivax Systems
jeremiah@vivaxpros.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

February 10, 2021

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2021.02.10
11:33:41 -07'00'

Melissa Haniewicz
Regional Hearing Clerk