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U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of: )  
)  
Mader Enterprises LLC, ) Docket No. TSCA-07-2018-0001  
d/b/a Earthway LLC, )  
)  
Respondent. )

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about April 25, 2018, pursuant to Section 409 of the Toxic Substance Control Act (TSCA), 15 U.S.C. § 2689, when the United State Environmental Protection Agency (Complainant or EPA) issued a Complaint and Notice of Opportunity For Hearing (Complaint) to Mader Enterprises LLC d/b/a Earthway LLC (Respondent).

The Complaint charged Respondent with 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.

The Complaint proposed a civil penalty of Sixteen Thousand Three Hundred Forty Dollars (\$16,340) against Respondent for these violations. The Complainant and Respondent subsequently entered negotiations in an attempt to settle the allegations in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - a. admits the jurisdictional allegations set forth in the Complaint;
  - b. neither admits nor denies the specific factual allegations stated in the Complaint;
  - c. consents to the assessment of a civil penalty, as stated herein;
  - d. consents to the issuance of any specified compliance or corrective action order;
  - e. consents to any conditions specified herein;
  - f. consents to any stated Permit Action;
  - g. waives any right to contest the allegations set forth herein; and

- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.
2. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.
3. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

#### **Penalty Payment**

4. EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), and has determined that the appropriate penalty for the violations is Four Thousand Five Hundred Ninety-Four dollars and Three cents (\$4,594.03). This penalty has been adjusted to reflect Respondent's size of business.
5. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify 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  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

6. 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

Jennifer Trotter, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

7. Respondent understands that its failure to timely pay any portion of the civil penalty 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or

stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

8. Full payment of the reduced penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

9. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

10. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations. Respondent has also received EPA firm certification.

11. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

12. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

13. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

14. The reduced penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal, State and local taxes.

15. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**Mader Enterprises LLC d/b/a Earthway LLC**

Date: 9-17-18

By: 

KEITA MADER  
Print Name

OWNER  
Title

**COMPLAINANT**  
**U. S. Environmental Protection Agency**

Date: 9/18/18

  
\_\_\_\_\_  
Jamie Green, Chief  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division

Date: 9-18-18

  
\_\_\_\_\_  
Jennifer Trotter  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

  
~~Karina Borrero~~ Kathleen Clever  
Regional Judicial Officer

9-20-18  
Date

**CERTIFICATE OF SERVICE**

I certify that 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 via Email to Complainant:

Jennifer Trotter.

Copy via Certified Mail, Return Receipt Requested to Respondent:

Mr. Keith Mader  
Mader Enterprises LLC d/b/a  
Earthway LLC  
9904 Wayne Ave.  
Kansas City, MO 64131.

Dated this 21 day of September, 2018.

  
\_\_\_\_\_  
Signed