

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

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Welek Construction Company,) **Docket No. TSCA-07-2020-0126**
)
 Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Welek Construction Company (“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).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated 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 serves as notice that the EPA has reason to believe that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, by failing to comply with information gathering requirements of TSCA and 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.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.
4. Respondent is Welek Construction Company, a company doing business in the state of Missouri.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to the TSCA include recordkeeping and reporting requirements to insure effective implementation.

7. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

8. The regulations set forth at 40 C.F.R. Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule (“RRP Rule”), require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standards for renovations that disturb painted surfaces in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

9. The requirements set forth in the regulations at 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R. § 745.82.

10. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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 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, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

11. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

12. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

13. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

14. The regulation at 40 C.F.R. § 745.83 defines “renovator” as an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

15. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

16. Section 11 of TSCA, 15 U.S.C. § 2610, provides that EPA may inspect any establishment, facility, or other premises in which chemical substances, mixtures or products subject to Subchapter IV of TSCA are stored or held before or after their distribution in commerce.

17. The regulation at 40 C.F.R. § 745.87(c) provides that failure or refusal to permit entry or inspection as required by 40 C.F.R. § 745.87 and TSCA § 11 is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

18. Section 15(4) of TSCA, 15 U.S.C. § 2614(4), provides that it shall be unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA § 11.

19. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E or TSCA § 11.

20. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorize a civil penalty of not more than \$37,500 per day for violations of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$40,576 for violations that occur after November 2, 2015, and are assessed after January 13, 2020.

General Factual Allegations

21. On or July 25, 2019, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA attempted to conduct an inspection at [REDACTED] in Columbia, Missouri (“the Property”) to evaluate Respondent’s compliance with TSCA and the requirements of the RRP Rule. Respondent denied EPA access to inspect the Property.

22. On October 22, 2019, EPA issued to Respondent a Subpoena Duces Tecum pursuant to Section 11(c) of TSCA, 15 U.S.C. § 2610(c), requiring Respondent to submit information regarding its compliance with TSCA and the RRP Rule. On November 12, 2019, Respondent submitted information in response to EPA’s Subpoena (“Subpoena Response”).

23. Respondent is, and at all times referred to herein was, a company doing business in the state of Missouri.

24. Respondent is, and at all times referred to herein was, a “person” and “firm” as defined by 40 C.F.R. § 745.83.

25. At the time of the attempted EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was engaged in a “renovation” of the Property as defined by 40 C.F.R. § 745.83. Respondent’s Subpoena Response revealed that Respondent removed and replaced drywall and painted several rooms of the Property. Additionally, information provided during the attempted inspection indicates that Respondent replaced several windows throughout the Property.

26. At all times relevant to this Consent Agreement and Final Order, Respondent’s renovation was a “renovation for compensation” per 40 C.F.R. § 745.82(a).

27. At all times relevant to this Consent Agreement and Final Order, the Property was “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA subsequent investigation revealed that the Property was built in 1940.

28. The Property was owned by a party other than Respondent and not occupied during the renovation.

29. As a result of the attempted EPA inspection and Respondent's Subpoena Response, Complainant has determined that violations of the RRP Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent's renovation activities at the Property.

Allegations of Violation

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

Count 1

31. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

32. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

33. The EPA attempted inspection and Respondent's Subpoena Response revealed that Respondent did not to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Property.

34. Respondent's failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

35. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

36. 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, including the work practice standards in 40 C.F.R. § 745.85(a).

37. EPA's attempted inspection and Respondent's Subpoena Response revealed that Respondent did not assign a certified renovator to the renovation of the Property and discharge all of the certified renovator responsibilities, including the responsibilities identified in Count 3, below.

38. Respondent's failure to ensure that a certified renovator was assigned to the renovation of the Property and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

39. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

40. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(1) requires firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

41. The attempted EPA inspection and Respondent's Subpoena Response revealed that Respondent did not post protective signs as required by 40 C.F.R. § 745.85(a)(1).

42. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of the work area before beginning the renovation until the renovation had been completed is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

43. The facts stated in Paragraphs 21 through 29 above are herein incorporated.

44. Pursuant to 40 C.F.R. § 745.87(c), the failure or refusal to permit entry or inspection as required by 40 C.F.R. § 745.87 and Section 11 of TSCA, 15 U.S.C. § 2610, is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

45. On July 25, 2019, Respondent did not allow EPA access to conduct an inspection of the Property pursuant to 40 C.F.R. § 745.87 and TSCA § 11.

46. Respondent's failure to permit entry or inspection as required by 40 C.F.R. § 745.87 and TSCA § 11 is a violation Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

CONSENT AGREEMENT

47. 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 herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (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.

48. 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.

49. 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

50. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$10,801, as set forth below.

51. 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>.

52. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lisa Haugen, Regional Hearing Clerk
haugen.lisa@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov.

53. 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

54. Full payment of the 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.

55. 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.

56. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

57. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

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

59. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

General Provisions

60. 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.

61. 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 EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

63. 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.

64. The EPA and Respondent agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by e-mail to the following addresses:

To EPA:

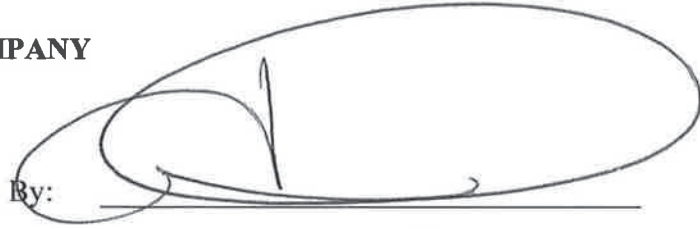
barton.kasey@epa.gov

To Respondent:

tgerding@evans-dixon.com


RESPONDENT
WELEK CONSTRUCTION COMPANY

Date: 5/4/20

By: 

JOHN WELEK
Print Name

PRESIDENT
Title

COMPLAINANT
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: -----

DAVID
COZAD
David Cozad
Director
Enforcement and Compliance Assurance Division

Digitally signed by DAVID
COZAD
Date: 2020.05.08
15:23:34 -05'00'

Date: -----

KASEY BARTON
Kasey Barton
Office of Regional Counsel

Digitally signed by KASEY BARTON
Date: 2020.05.11 08:22:55 -05'00'

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
BORROMEIO

Digitally signed by
KARINA BORROMEIO
Date: 2020.05.11
10:22:30 -05'00'

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 7, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

barton.kasey@epa.gov
evans.timothy@epa.gov

Copy via E-mail to Attorney for Respondent and Respondent:

tgerding@evans-dixon.com
welek5@aol.com

Dated this ____ day of _____, _____.

LISA
HAUGEN
Signed

Digitally signed by LISA
HAUGEN
Date: 2020.05.11
14:35:40 -05'00'