

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
GREENBUILD DESIGN &)
CONSTRUCTION, LLC)
)
Anchorage, Alaska)
)
Respondent.)
_____)

Docket No. TSCA-10-2021-0006

**AFFIDAVIT OF KIM FARNHAM
IN SUPPORT OF COMPLAINANT’S
INITIAL PREHEARING EXCHANGE**

1 COMES NOW, Ms. Kim Farnham, to declare under penalty of perjury, the following:

2 **BACKGROUND AND JOB DUTIES**

- 3 1. I am a compliance officer and an inspector for the United States Environmental Protection Agency
- 4 (EPA), Region 10, based in Seattle, Washington.
- 5 2. I work in the Air and Toxics Enforcement Section of Region 10’s Enforcement and Compliance
- 6 Assurance Division.
- 7 3. Specifically, my title is Environmental Protection Specialist, but I describe part of my role as “Lead-
- 8 Based Paint Compliance Officer.”
- 9 4. I have worked at EPA Region 10 since 2000 and have been in my current position there since 2011.
- 10 5. As a Lead-Based Paint Compliance Officer, my duties include conducting inspections to determine
- 11 compliance with the 1018 Disclosure Rule under the Residential Lead-Based Paint Hazard
- 12 Reduction Act and with the Renovation, Repair and Painting (RRP) Rule under the Toxic
- 13 Substances Control Act (TSCA).
- 14 6. Since 2011, I have completed over 300 lead-based paint inspections and about 50 lead-based paint
- 15 civil administrative enforcement actions.

- 1 7. I have completed multiple trainings relevant to my current position, including lead-based paint
2 abatement supervisor training, asbestos supervisor and building inspector training, RRP renovator
3 certification, and lead risk assessor certification.
- 4 8. I completed education and training to become a federally credentialed inspector and must complete
5 refresher training annually to maintain this inspector credential.
- 6 9. I also maintain Hazardous Waste Operations and Emergency Response certification, through an
7 initial 40-hour training and annual refresher training.

8 **EPA REGION 10 LEAD-BASED PAINT ENFORCEMENT**

- 9 10. At EPA Region 10 we monitor compliance with the RRP Rule through recordkeeping inspections
10 and work site inspections, mostly in Idaho and Alaska. Oregon and Washington, the two other states
11 in EPA Region 10, each have their own approved lead-based paint program through which they
12 enforce rules that meet or exceed the federal standard and each state conducts most of its own
13 inspections and enforcement actions.
- 14 11. For recordkeeping inspections, we target firms doing renovation work that is likely subject to the
15 RRP Rule and we ask the firm to meet with us at a public location to discuss their compliance and
16 provide required records to EPA.
- 17 12. The RRP Rule requires firms offering to perform, performing, or claiming to perform renovations in
18 pre-1978 housing to maintain certain records, among other requirements. A firm is defined in the
19 RRP Rule as including companies, corporations, sole proprietorships or individuals doing business.
- 20 13. I find firms doing renovation work on pre-1978 housing (which is also referred to as “target
21 housing” in the rule) by reviewing local building permits in Idaho and Alaska.
- 22 14. When I find a building permit for renovation activities in a house that was built before 1978 and
23 there is a firm doing the work for compensation, I then check the EPA Federal Lead-Based Paint

1 Program database to determine whether the firm has been certified to perform renovations in target
2 housing.

3 15. If they are not firm certified, I typically follow up with a "Notice of Inspection" letter to the firm
4 explaining the RRP Rule and stating the reasons EPA believes the firm is subject to the RRP Rule.
5 The letter asks the firm to attend a recordkeeping inspection with EPA and sets a date, time, and
6 place for the inspection.

7 16. We hold recordkeeping inspections at public places such as hotel conference rooms in the firm's
8 local area.

9 17. I usually contact the firm before the scheduled inspection to answer any questions and confirm that
10 they plan to attend. If they are unable to attend, we try to schedule the inspection at a different time
11 that works for them.

12 18. Some firms state that a firm representative will attend the inspection, but then they are a no-show on
13 the day of the inspection. It is EPA's practice to send them another Notice of Inspection and try to
14 meet with them the next time we are in their area.

15 19. EPA Region 10 also conducts work site inspections to determine compliance with the RRP Rule.

16 20. EPA receives tips and complaints from the public about renovators, which may lead us to conduct an
17 onsite inspection of the renovation.

18 21. EPA also conducts onsite inspections where firms that we have previously contacted are doing work
19 subject to the RRP Rule and it appears they are failing to follow RRP Rule requirements.

20 22. When I review building permits, I sometimes find that firms I have conducted recordkeeping
21 inspections with, or that I have tried to conduct recordkeeping inspections with, continue to perform
22 renovations for compensation in target housing without firm certification. I prioritize doing onsite
23 inspections of renovations where EPA has previously contacted the firm and has explained the RRP
24 Rule, but the firm continues to work on target housing without proper certification.

1 23. I talk with the other EPA Region 10 lead-based paint inspectors and we share information with each
2 other about firms that appear to repeatedly violate the RRP Rule. We prioritize inspections of those
3 firms.

4 24. I also happen to find contractors doing renovation work as I drive through residential neighborhoods
5 on my way to preplanned onsite inspections. In these cases, I observe renovation work being
6 performed on target housing and I can tell from the public right-of-way that it appears that proper
7 work practices are not being followed. In those situations, I may stop and conduct an unannounced
8 inspection.

9 **EPA ONSITE INSPECTION PROTOCOL**

10 25. As an EPA Lead-Based Paint Compliance Officer, I conduct onsite inspections according to a
11 routine and a set of steps that I repeat at every inspection.

12 26. When I arrive at the residential address where a renovation is occurring that I am going to inspect, I
13 first drive past the house, circle around the block, and then return to park at a short distance from the
14 house.

15 27. I do not park right in front of the house or next to renovators' vehicles. This is to assess the situation
16 at a safe distance before I have exited the vehicle. It also allows me to view the work site from a
17 distance and take photos of the work site and contractors' vehicles from the public right-of-way as I
18 approach the work site.

19 28. Whenever I approach an active work site, I look around as I approach, observing whether
20 containment methods are being used at the work site and if there are warning signs posted around the
21 work site as required by the RRP Rule.

22 29. I usually conduct onsite inspections by myself, but sometimes I am accompanied by an inspector-in-
23 training or by a second federally credentialed inspector.

- 1 30. As I approach the work site on foot, I look for people who are engaged in renovation work at the
2 location.
- 3 31. I ask to speak with the person in charge of the renovation work or the owner of the renovation firm if
4 they are present.
- 5 32. I introduce myself, stating my name and providing a copy of my business card.
- 6 33. I then identify myself as a federally credentialed EPA inspector and I show them a copy of my
7 credentials.
- 8 34. I state that I would like to conduct a TSCA lead-based paint inspection and I show them an EPA
9 Notice of Inspection.
- 10 35. I ask the firm representative to sign the Notice of Inspection, and then I sign the Notice of
11 Inspection.
- 12 36. I also ask them to sign a receipt for documents if there are any, but usually I do not collect
13 documents at onsite inspections so the firm being inspected usually is not asked to sign that form.
- 14 37. During the inspection, one of the first questions I ask is whether the renovator has a copy of their
15 renovator certification on site.
- 16 38. I ask the person I am speaking with if they are a certified renovator, and if they are not, I ask if they
17 know whether anyone working at the site is a certified renovator.
- 18 39. I take photos and notes during the inspection and I walk around different sides of a house to observe
19 as much of the renovation as I can do safely.
- 20 40. I document things I observe that indicate there may be TSCA violations occurring at the work site,
21 such as the absence of posted warning signs, the absence of plastic sheeting or other impermeable
22 material on the ground to catch paint chips, and the way remodeling or renovation waste is being
23 handled.
- 24 41. Due to safety concerns I do not typically enter houses undergoing renovation.

1 42. At the end of the inspection, I discuss any concerns I have about the firm's compliance with the RRP
2 Rule.

3 43. I do not make decisions in the field about whether TSCA violations have occurred, and further, I do
4 not have the authority to do that.

5 44. I state what the RRP Rule requires and explain what renovators must do to comply with it.

6 45. I tell the firm that the next steps in the process are that I return to the EPA office, review the
7 information, and refer the case to a case developer. I tell the firm that the case developer may contact
8 them.

9 46. I also let the firm know that they will receive a copy of my inspection report after it is complete.

10 47. Contractors often ask what they need to do to comply with the law. I offer them compliance
11 assistance and explain how they can become firm and renovator certified.

12 48. After I return to the office, I review my notes and photos from the inspection.

13 49. I may follow up with the firm to ask them for records such as copies of invoices and contracts with
14 subcontractors.

15 50. I follow up with firms via email or phone to confirm whether they have become firm and renovator
16 certified since the inspection.

17 51. I write the inspection report and I later share a copy of it with the firm that was inspected.

18 52. I create a physical file folder to collect all physical paperwork associated with the case and I create
19 an electronic file for everything electronic we collect that is associated with the case.

20 53. If I believe that the firm may have violated TSCA, I refer it to a case developer for further review.

21 **GREENBUILD DESIGN & CONSTRUCTION LLC INSPECTION**

22 54. On July 25, 2018, I inspected a renovation being conducted by Greenbuild Design & Construction
23 LLC at 2208 Turnagain Parkway in Anchorage, Alaska.

1 55. I was in Anchorage conducting recordkeeping inspections with Rob Hamlet, a lead-based paint
2 inspector-in-training who was with me to gain field experience as part of his training.

3 56. Before we left Seattle, Rob and I were preparing our list of firms to perform recordkeeping
4 inspections of in Anchorage.

5 57. Rob told me that Greenbuild had applied for another building permit.

6 58. I asked him if the permit was for a pre-1978 home and he told me it was.

7 59. I told him we should try to inspect it if it was an active work site while we were in Anchorage.

8 60. I had no contact with the firm Greenbuild Design & Construction LLC before this trip to Anchorage,
9 but I had heard from my EPA colleagues that they had prior contacts with the firm about its
10 compliance and they had been unsuccessful in their effort to do recordkeeping inspections with the
11 firm.

12 61. Going into the inspection, I knew that EPA had had trouble getting this firm to respond to EPA
13 communications and getting it to show up to scheduled inspections.

14 62. While we were in Anchorage conducting inspections, Rob and I drove to 2208 Turnagain Parkway
15 to see if the renovation that Greenbuild had pulled a permit for was active.

16 63. Rob and I drove past the house and around the block before parking a short distance away from the
17 house, down the street.

18 64. I remember I could hear pressure washing immediately after getting out of the car.

19 65. As we approached the house, Rob took photos of Respondent's truck parked in the street and the
20 house being worked on.

21 66. Several workers were at the property and at least one of them was pressure washing the house when
22 we arrived.

23 67. I asked the first person I saw if they were working on the renovation job.

1 68. Rodrigo von Marees came outside to talk with me. At the start of the inspection I asked Mr. von
2 Marees if he was the owner of Greenbuild and he confirmed that he was.

3 69. I provided my business card, showed my federal inspector credentials, showed Mr. von Marees the
4 Notice of Inspection, and asked if he would sign it.

5 70. He signed the Notice of Inspection.

6 71. I asked Mr. von Marees if he was OK talking to me and he indicated that he felt OK talking with me.

7 72. Mr. von Marees saw Rob taking photos of the active renovation work and he did not object.

8 73. Mr. von Marees and I stood and talked at the tailgate of his truck, using it to review and sign the
9 paperwork.

10 74. I recall that workers were power washing the side and back of the house.

11 75. I observed paint chips on the ground near the house.

12 76. I also noticed that there were no visible warning signs notifying people not involved with the
13 renovation to stay out of the area.

14 77. There was no plastic sheeting on the ground around the house.

15 78. I asked Mr. von Marees if Greenbuild was firm certified and if he was renovator certified.

16 79. He said the Greenbuild was not firm certified and he was not renovator certified.

17 80. I stated the requirements of the RRP Rule and explained that it requires firms to be certified to
18 perform renovations on target housing.

19 81. Mr. von Marees asked how to become firm certified and I explained how he could do that.

20 82. I talked to Mr. von Marees about next steps. I told him I would return to the office and refer the case
21 to a case developer.

22 83. After the inspection I emailed Mr. von Marees to confirm whether he had become firm certified.

23 84. I had to follow up with Mr. von Marees twice by email about whether he had become firm certified,
24 because he did not respond to my initial attempts to contact him.

Respectfully submitted,

(Signature and Date)

Ms. Kim Farnham

Environmental Protection Specialist

EPA Region 10, Enforcement and Compliance Assurance Division