



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
July 16, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL 7009 1680 0000 7676 4940
RETURN RECEIPT REQUESTED

Mr. Douglas Rank
D & S Construction of Western Ohio, LLC
540 Bulle Road
Sidney, Ohio 45365

Consent Agreement and Final Order in the Matter of
D & S Construction of Western Ohio, LLC, Docket No. TSCA-05-2013-0012

Dear Mr. Rank:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 16, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$400 is to be paid in the manner described in paragraphs 45 and 46. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by August 15, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxic Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

D & S Construction of Western Ohio, LLC
Sidney, Ohio

Respondent

) Docket No.

) TSCA-05-2013-0012

) Proceeding to Assess a Civil
) Penalty Under Section 16(a) of the
) Toxic Substances Control Act,
) 15 U.S.C. § 2615(a)

RECEIVED

JUL 16 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is D & S Construction of Western Ohio, LLC, a corporation doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or

the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), required the Administrator of EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

10. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), required the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

11. Section 407 of TSCA, 15 U.S.C. § 2687, required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

12. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), EPA promulgated

regulations at 40 C.F.R. Part 745, Subpart E, residential property renovation, requiring, among other things, that persons who perform for compensation a renovation of target housing provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. These requirements are known as the Pre-Renovation Education Rule (PRE Rule).

13. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, residential property renovations and lead-based paint activities. These regulations prescribe procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, known as the Lead; Renovation, Repair, and Painting Program Rule (RRP Rule).

14. Under 40 C.F.R. Part 745, Subpart E, each person who performs for compensation a renovation of target housing or a child-occupied facility must be certified by EPA and by an EPA accredited training provider to conduct renovation and/or painting activities in target housing and/or child occupied facilities and must comply with specific work practice and recordkeeping requirements of the RRP by April 22, 2010. Each person who performs for compensation a renovation of target housing or a child occupied facility must also provide a lead hazard information pamphlet to the owner and occupant of such housing or child occupied facility prior to commencing the renovation and must comply with the PRE Rule by June 1, 1999, codified at 40 C.F.R. § 745.84, (amended and recodified 73 Fed. Reg. 21691 (April 22, 2008)).

15. 40 C.F.R. § 745.103 defines *residential dwellings* to mean a single-family

dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

16. 40 C.F.R. § 745.83 defines *child-occupied facility* to mean a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each days visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

17. 40 C.F.R. § 745.223 defines *common area* to mean a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

18. 40 C.F.R. § 745.83 defines *firm* to mean 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.

19. 40 C.F.R. § 745.83 defines *minor repair and maintenance activities* to mean activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by Section 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

20. 40 C.F.R. § 745.83 defines *pamphlet* to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326.

21. 40 C.F.R. § 745.83 defines *renovation* to mean 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 this part (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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

22. 40 C.F.R. § 745.83 defines *renovator* to mean 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.

23. 40 C.F.R. § 745.82(b) states that emergency renovations are not exempt from the cleaning requirements of Section 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with Section 745.90(b)(2), the cleaning verification requirements of Section 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of Section 745.86(b)(6) and (b)(7).

24. 40 C.F.R. § 745.84(a)(1) requires that the firm performing renovation in dwelling units on or after April 22, 2008, provide the owner or the residential dwelling unit of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certification of mailing at least 7 days prior to the renovation.

25. 40 C.F.R. § 745.84(a)(2) requires that the firm performing renovation in dwelling units on or after April 22, 2008, provide the occupant of the residential dwelling unit of target housing with the pamphlet and obtain from the occupant, a written acknowledgement that the occupant has received the pamphlet or obtain a certification of mailing at least 7 days prior to the renovation.

26. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

27. 40 C.F.R. § 745.81(a)(3) requires that on or after April 22, 2010, all

renovations must be directed by renovators certified in accordance with Section 745.90(a) and performed by certified renovators or individuals trained in accordance with Section 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

28. 40 C.F.R. § 745.85(a) requires that a renovation be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

29. 40 C.F.R. § 745.85(a)(5) requires that after the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

30. 40 C.F.R. § 745.86(a) requires that the renovator performing the renovation retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.

31. Under 15 U.S.C. § 2689, failing or refusing to comply with any requirement of 40 C.F.R. Part 745, Subpart E violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

32. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d) authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$37,500 for violations that occurred after January 12,

2009.

Factual Allegations and Alleged Violations

33. On January 31, 2011, Respondent entered into a construction contract with a homeowner to renovate approximately 1400 square feet of a single-family dwelling located at 746 Riverside Drive, Sidney, Ohio.

34. The single-family dwelling referenced in paragraph 33 above, is target housing and a residential dwelling as defined in 40 C.F.R. Section 745.103.

35. On February 16, 2011, EPA sent a Request for Information Request to Respondent investigating whether Respondent had complied with the RRP Rule and the PRE Rule when renovating the target housing, referenced in paragraph 33, above.

36. Respondent replied to the Request for Information on March 16, 2011.

37. The renovation conducted at the address referenced in paragraph 33, above, is a renovation as defined in 40 C.F.R. § 745.103.

38. The renovation described in paragraph 33, above, does not qualify for an exception under 40 C.F.R. Section 745.82(a).

39. Respondent and every employee of Respondent who performs or directs work to perform renovations is a renovator as defined in 40 C.F.R. § 745.103

40. Respondent failed to provide the owner of the single-family dwelling of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the January 31, 2011, renovation described in paragraph 33, above, as required by 40 C.F.R. § 745.85(a)(2)(ii)(C), as promulgated under 15 U.S.C. § 2682.

41. Respondent failed to retain and make available records necessary to

demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the renovation described in paragraph 33, above, including failure to make available records documenting receipt of a pamphlet, as required by 40 C.F.R. § 745.84(a)(1), and documentation of compliance with the work practice standards requirements of 40 C.F.R. § 745.85, as required by 40 C.F.R. § 745.86(b).

42. Respondent failed to obtain initial certification from EPA before offering to perform the renovation, as required by 40 C.F.R. § 745.89(a)(1).

43. Respondent failed to ensure all individuals performing renovation activities on behalf of the firm were either certified renovators or had been trained by a certified renovator, as required by 40 C.F.R. § 745.89(d)(1).

44. Respondent failed to ensure a certified renovator was assigned to the renovation performed by the firm and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2).

Civil Penalty

45. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$400. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, the effect on ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant considered EPA's Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, Interim Final Policy, dated August 2010. In analyzing financial information submitted by the Respondent, Complainant found that the

Respondent had an ability to pay a \$400 penalty.

46. Within 90 days after the effective date of this CAFO, Respondent must pay a \$400 civil penalty for the TSCA violations by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

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

47. A transmittal letter stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Richard Nagle (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not

reviewable in a collection action.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

51. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

52. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

53. This CAFO does not affect Respondent's responsibility to comply with the PRE Rule and the RRP Rule and other applicable federal, state, and local laws.

54. Respondent certifies that he is complying with the PRE Rule and the RRP Rule.

55. The terms of this CAFO bind Respondent, and his successors and assigns.

56. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorney's fees in this action.

58. This CAFO constitutes the entire agreement between the parties.

D & S Construction of Western Ohio, LLC., Respondent

4-24-13

Date



Douglas Rank
Managing Member
D & S Construction of Western Ohio, LLC

United States Environmental Protection Agency, Complainant

7/11/2013

Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

**Douglas Rank, Owner
D & S Construction of Western Ohio, LLC
Sidney, Ohio
Docket No. TSCA-05-2013-0012**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-12-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


JUL 16 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving D & S Construction of Western Ohio, LLC, was filed on July, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7009 1680 0000 7676 4940 to:

Mr. Douglas Rank
D & S Construction of Western Ohio, LLC
540 Bulle Road
Sidney, Ohio 45365

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Richard Nagle, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2013-0012



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