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U.S. EPA - REGION IX

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:) Docket No. TSCA-09-2021-0044

H.K. Construction Corp.,) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
 Respondent.) 22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and H.K. Construction Corp. (the “Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action brought against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

1 2. Complainant is the Manager of the Toxics Section in the Enforcement and
2 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
3 bring this action and to sign a consent agreement settling this action.

4 3. Respondent, a Hawaiian corporation headquartered in Honolulu, Hawaii, is a
5 residential property home designer and renovator that performs remodels and renovations
6 throughout the State of Hawaii.

7 B. STATUTORY AND REGULATORY BASIS

8 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745,
9 Subpart E requires a person who performs for compensation a renovation of target housing and
10 child-occupied facilities to provide a lead hazard information pamphlet to the owner and
11 occupant before beginning the renovation.

12 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.
13 Part 745, Subpart E provides requirements for certification of individuals and firms engaged in
14 lead-based paint activities and work practice standards for renovation, repair, and painting
15 activities in target housing and child-occupied facilities.

16 6. “Target housing” means any housing constructed prior to 1978, except housing for the
17 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
18 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
19 U.S.C. § 2681.

20 7. “Person” means any natural or judicial person including any individual, corporation,
21 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
22 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §
23 745.83.

24 8. “Firm” means a company, partnership, corporation, sole proprietorship or individual
25 doing business, association, or other business entity; a Federal, State, Tribal, or local government
26 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

27 9. “Renovation” means the modification of any existing structure, or portion thereof, that
28 results in the disturbance of painted surfaces, unless that activity is 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 planning thresholds to install weatherstripping), and interim controls that disturb painted surfaces The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

10. “Painted surface” means a component surface covered in whole or in part with paint or other surface coatings. 40 C.F.R. § 745.83.

11. “Component or building component” means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to interior components such as . . . windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40 C.F.R. § 745.83.

12. “Renovator” means any 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. 40 C.F.R. § 745.83.

13. “Pamphlet” means 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. 40 C.F.R. § 745.83.

14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties

1 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to
2 exceed \$41,056 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
3 occurred after November 2, 2015 where penalties were assessed on or after December 23, 2020.

C. ALLEGED VIOLATIONS

15. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

16. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at 40 C.F.R. § 745.83.

17. In or around 2017-18 and 2019, respectively, Respondent performed “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the residential properties located at 5228 Apo Drive in Honolulu, Hawaii, and 7235 Nuulolo Street in Honolulu, Hawaii (collectively, the “Properties”).

18. At all times relevant to this CAFO, the Properties were “target housing,” as that term is defined at 40 C.F.R. § 745.83.

19. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 748.83, and either obtain from the owner a written acknowledgment that the owner has received the “pamphlet” or obtain a certificate of mailing at least seven days prior to the renovation. 40 C.F.R. § 745.84(a)(1).

20. Respondent did not either obtain from the owners a written acknowledgment that the owners have received the “pamphlet” or obtain a certificate of mailing at least seven days prior to the renovations at the Properties.

21. Respondent's failures to either obtain from the owners a written acknowledgment that the owners have received the "pamphlet" or obtain a certificate of mailing at least seven days prior to the renovations at the Properties constitute two violations of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

22. Firms performing renovations must retain documentation of compliance with the requirements of § 745.85, including documentation that: a certified renovator was assigned to the project; a certified renovator provided on-the-job training for workers used on the project; a

1 certified renovator performed or directed workers who performed all of the work practice tasks
2 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning
3 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

4 23. Respondent did not retain documentation for the renovations performed at the
5 Properties that: a certified renovator was assigned to the project; a certified renovator provided
6 on-the-job training for workers used on the project; a certified renovator performed or directed
7 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
8 renovator performed the post-renovation cleaning verification described in § 745.85(b).

9 24. Respondent's failures to retain documentation for the renovations performed at the
10 Properties that: a certified renovator was assigned to the project; a certified renovator provided
11 on-the-job training for workers used on the project; a certified renovator performed or directed
12 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
13 renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute
14 eight violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

15 25. Firms performing renovations must ensure that a certified renovator is assigned to
16 each renovation performed by the firm and discharges all of the certified renovator
17 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

18 26. Respondent did not ensure that a certified renovator discharged all of the certified
19 renovator responsibilities identified in § 745.90 for the renovations performed at the Properties.

20 27. Respondent's failures to ensure that a certified renovator discharged all of the
21 certified renovator responsibilities identified in § 745.90 for the renovations performed at the
22 Properties constitute two violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15
23 U.S.C. § 2689.

24 D. RESPONDENT'S ADMISSIONS

25 28. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
26 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
27 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
28 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the

assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

29. In full and final settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of FOURTEEN THOUSAND, NINE HUNDRED, AND EIGHTY-ONE DOLLARS (\$14,981). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must 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 = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

1 U.S. Treasury REX/Cashlink ACH Receiver
2 ABA = 051036706
3 Account = 31006, Environmental Protection Agency
4 CTX Format Transaction Code 22 – checking

5 Physical location of U.S. Treasury facility:

6 5700 Rivertech Court
7 Riverdale, MD 20737

8 Remittance Express (REX) = (866) 234-5681

9 Online Payment:

10 This payment option can be accessed from the information below:

11 www.pay.gov
12 Enter “SFO 1.1” in the search field
13 Open form and complete required fields

14 If clarification regarding a particular method of payment remittance is
15 needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

16 A copy of each check, or notification that the payment has been made by one of the other
17 methods listed above, including proof of the date payment was made, shall be sent with a
18 transmittal letter, indicating Respondent’s name, the case title, and docket number, to the
19 following regular mail or email addresses:

20 Regional Hearing Clerk
21 Office of Regional Counsel (ORC-1)
22 U.S. Environmental Protection Agency, Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105
R9HearingClerk@epa.gov

25 Brandon Boatman
26 Toxics Section
27 Enforcement and Compliance Assurance Division (ENF-2-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
boatman.brandon@epa.gov

28 30. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
from Respondent’s federal, state, or local taxes, nor shall Respondent allow any other person to
use such payment as a tax deduction.

31. If Respondent fails to pay the assessed civil administrative penalty of FOURTEEN

1 THOUSAND, NINE HUNDRED, AND EIGHTY-ONE DOLLARS (\$14,981), as identified in
2 Paragraph 29, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated
3 penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed
4 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued
5 stipulated penalties are paid and shall become due and payable upon EPA's written request.
6 Failure to pay the civil administrative penalty specified in Paragraph 29 by the deadline specified
7 in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.

(2) The U.S. Government may 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 U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. §§ 13(C) and 13(H).

(3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.

(4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges, and nonpayment penalties against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 29 by the deadline specified in that Paragraph.

(a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty

(30) days of the effective date of this CAFO.

(b) Administrative Handling Charges. Pursuant to 31 U.S.C.

Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on either actual or average cost incurred (including both direct and indirect costs), for every month in which any portion of the assessed penalty is more than thirty (30) days past due

(c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)

and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may be assessed on all debts more than ninety (90) days delinquent.

F. CERTIFICATION OF COMPLIANCE

32. In executing this CAFO, Respondent certifies that it is now fully in compliance with the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

G. RETENTION OF RIGHTS

33. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

34. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

35. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

2 36. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
3 effective on the date that the Final Order contained in this CAFO, having been approved and
4 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

6 37. The undersigned representative of Complainant and the undersigned representative of
7 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
8 of this CAFO and to bind the party he or she represents to this CAFO.

9 38. The provisions of this CAFO shall apply to and be binding upon Respondent and its
10 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
11 and assigns.

FOR RESPONDENT H.K. CONSTRUCTION CORP.:

5/4/21
DATE



ANGIE KIM
President
H.K. Construction Corp.

FOR COMPLAINANT EPA:

5/17/2021
DATE

MATTHEW SALAZAR
Digitally signed by
MATTHEW SALAZAR
Date: 2021.05.17
12:52:30 -07'00'

MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and H.K. Construction Corp. having entered into the foregoing Consent
3 Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2021-0044) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of FOURTEEN
5 THOUSAND, NINE HUNDRED, AND EIGHTY-ONE DOLLARS (\$14,981) and comply with
6 the terms and conditions set forth in the Consent Agreement.

7 **STEVEN**
8 **JAWGIEL**

Digitally signed by STEVEN
JAWGIEL
Date: 2021.05.26 09:49:27
-07'00'

9 DATE

10 Steven Jawgiel
11 Regional Judicial Officer
12 U.S. Environmental Protection Agency, Region IX

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CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of H.K. Construction Corporation (Docket No. TSCA-09-2021-0044) was filed with the Regional Hearing Clerk, and that a true and correct copy of the same was sent to the following parties:

RESPONDENT
(via Email)

ANGIE KIM
President
H.K. Construction Corp.
2046 S. King Street
Honolulu, Hawaii 96826
Email: angie@hkchawaii.com

COMPLAINANT
(via Email)

EDGAR P. CORAL
Assistant Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Email: Coral.Edgar@epa.gov

Steven Armsey
Regional Hearing Clerk
EPA, Region 9