

FILED

November 19, 2024

8:19AM

**U.S. EPA REGION 7
HEARING CLERK**

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

BEFORE THE ADMINISTRATOR

In the Matter of:

Kim Roberts Properties, LLC

Respondent

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Docket No. TSCA-07-2024-0152

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Kim Roberts Properties, LLC (“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).

Parties

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

3. Respondent is a limited liability company in good standing under the laws of the state of Missouri doing business in the state of Missouri.

Statutory and Regulatory Background

4. 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.

5. 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 TSCA include recordkeeping and reporting requirements to insure effective implementation.

6. 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).

7. The regulations set forth at 40 C.F.R., Part 745, Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require, as more fully stated therein, that (i) owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin; and (ii) establish work practice standards for renovations that disturb painted surfaces in target housing and child-occupied facilities; and (iii) requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

8. The requirements set forth in the regulations at 40 C.F.R., Part 745, 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.

9. 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.

10. 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).

11. 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.

12. 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.

13. 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. 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.

14. 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 Section 409 of TSCA, 15 U.S.C. § 2689. 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 \$48,512 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

General Factual Allegations

15. On or about September 1, 2023, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA attempted to conduct an inspection at 7150 Washington Ave., in St. Louis, Missouri (“the Property”) to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”).

16. On or about October 25, 2023, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, EPA sent Respondent a subpoena duces tecum (“Subpoena”) to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule. On or about November 14, 2023, EPA received Respondent’s Subpoena responses.

17. From the Subpoena, six properties were reviewed, and five of the following properties (“Properties”) were identified by the EPA as “target housing” as defined by Section 401(17) of TSCA 15 U.S.C. § 2681(17):

(a) 1012 Nolan Dr., St. Louis, MO 63122. The property was built in 1939.

(b) 630 Westborough Pl., St. Louis, MO 63119. The property was built in 1954.

(c) 7060 Maryland Ave., University City, MO 63130. The property was built in 1920.

(d) 8934 Lawn Ave., St. Louis, MO 63144. The property was built in 1942.

(e) 7150 Washington Ave., St. Louis, MO 63130. The property was built in 1928.

18. Respondent is, and at all times referred to herein was, a business doing business in the state of Missouri under Kim Roberts Properties, LLC.

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

20. 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 responses demonstrated that Respondent was performing renovations at the identified properties, including remodeling kitchens and bathrooms in each of the target properties.

21. 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).

22. As a result of the information obtained by the agency through Respondent’s Subpoena responses, Complainant asserts that violations of the Renovation, Repair, and Painting 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.

Complainant’s Allegations of Violation

23. Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, which Respondent neither admits nor denies, as follows:

Count 1: Failure to obtain initial firm certification

24. The facts stated in Paragraphs 15 through 22 above are herein incorporated.

25. 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.

26. The information EPA received through Respondent's Subpoena responses inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Property.

27. 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). Therefore, under 40 C.F.R. § 745.87(a), Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2: Failure to assign a certified renovator

28. The facts stated in Paragraphs 15 through 22 above are herein incorporated.

29. 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 the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

30. The information EPA received from Respondent's Subpoena responses revealed that Respondent failed to assign a certified renovator to the renovation performed at the Properties.

31. Respondent's failure to assign a certified renovator to the renovation at the Properties 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: Failure to retain records

32. The facts stated in Paragraphs 15 through 22 above are herein incorporated.

33. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation.

34. Pursuant to 40 C.F.R. § 745.86(b)(6), one of the records that must be retained for inspection is documentation of compliance with the requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for all workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

35. The Subpoena responses revealed that Respondent failed to prepare and retain records as required by 40 C.F.R. §§ 745.86(a) and 745.86(b)(6).

36. Respondent's failure to prepare and retain records is a violation of 40 C.F.R. § 745.86(a) and 745.86(b)(6). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4: Failure or refusal to permit entry or inspection

37. The facts stated in Paragraphs 15 through 22 above are herein incorporated.

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

39. On September 1, 2023, an EPA inspector attempted to conduct an inspection at 7150 Washington Ave., St. Louis, MO 63130, which Respondent denied.

40. Respondent's failure or refusal to allow an EPA inspector to complete an inspection of the Property is a violation of § 745.87(c) and Section 11 of TSCA, 15 U.S.C. § 2610. Respondent, therefore, violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

CONSENT AGREEMENT

41. 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.

42. 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.

43. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

44. Respondent consents to receiving an electronic copy of the filed Consent Agreement and Final Order at the following e-mail address: rpecha@jenkinsklings.com.

Penalty Payment

NORMAL PAYMENT WITHIN 30 DAYS:

45. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fourteen Thousand Five Hundred Dollars (\$14,500) based on a substantiated reduction applying the EPA's Lead-Based Paint Graduated Penalty Approach Policy, as set forth below.

46. 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 979078
St. Louis, Missouri 63197-9000

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

Effect of Settlement and Reservation of Rights

47. 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.

48. 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.

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

50. 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 other 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.

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

52. This Consent Agreement and Final Order 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

53. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

54. 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.

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

56. 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
Kim Roberts Properties, LLC



Signature Date 11-13-24

Robert B. Camenzind

Printed Name

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Michele Nelson
Office of Regional Counsel

Date

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 Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify 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 E-mail to Complainant:

Michele Nelson
Office of Regional Counsel
Nelson.michele@epa.gov

Chris Muehlberger
Office of Regional Counsel
Muehlberger.christopher@epa.gov

William Blair
Enforcement and Compliance Assurance Division
Blair.william@epa.gov

Milady Peters
Office of Regional Counsel
Peters.milady@epa.gov

Copy via E-mail to Respondent:

Mr. Robert Camenzind
Kim Roberts Properties, LLC
449 East Bodley
St. Louis, Missouri 63112
bob@kimrobertsrealty.com

Roger W. Pecha, Esq.
Attorney for Respondent
Jenkins Kling P.C.
rpecha@jenkinskling.com

Dated this _____ day of _____, _____.

Signed