

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In re:

Groen Builders, Inc.
75 Chapman Drive
Rochester, New Hampshire 03839

Respondent

Proceeding under Section 16(a)
of the Toxic Substances Control
Act, 15 U.S.C. § 2615(a).

Docket No. TSCA-01-2014-0038

**CONSENT AGREEMENT AND
FINAL ORDER**

I. INTRODUCTION

The United States Environmental Protection Agency, Region 1 (“EPA”), as Complainant, and Groen Builders, Inc. (“Groen” or “Respondent”), as Respondent, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule”), and, thereby, Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 16 of TSCA, 15 U.S.C. § 2615. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any

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issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. EPA alleges that Respondent failed to comply with TSCA Sections 402(c)(3) and 406(b), 15 U.S.C. §§ 2682(c)(3) and 2686(b), and the federal regulations of the Renovation, Repair and Painting (“RRP”) Rule promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart E. Specifically EPA alleges that Respondent failed to comply with the RRP Rule when it conducted three separate renovations during calendar year 2012.

2. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (“Act”) in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. 42 U.S.C. § 4851(1)-(4). One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. *Id.* § 4851a(2). To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692. Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, § 1021, 106 Stat. 3672, 3912 (1992).

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth

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at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending 40 C.F.R. Part 745, Subparts E and L (the “Renovation, Repair and Painting Rule” or the “RRP Rule”). *See* Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (issued Mar. 31, 2008) (codified at 40 C.F.R. Part 745, Subpart E).

4. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all “renovations” performed for compensation in “target housing” and “child-occupied facilities.” “Renovation” is defined as “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces” “Renovation includes (but is not limited to). . . removal of building components (e.g. . . . windows).” 40 C.F.R. § 745.83. “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling. “Child-occupied facility” is defined as “a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under [six] years of age, on at least two different days with in any week . . . provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least 60 hours.” *Id.* “Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms.” They may be located in target housing or in public or commercial buildings. *Id.*

5. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual

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renovators, the work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records.

6. Pursuant to 40 C.F.R. § 745.85 and 40 C.F.R. § 745.89(d)(1), “renovations” must be performed by certified “firms” using certified “renovators.” Certified “firms” must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. 40 C.F.R. § 745.89(d)(3). A “firm” includes a corporation. *Id.* § 745.83.

7. A “renovator” is defined as “an individual who either performs or directs workers to perform renovations.” *Id.* Pursuant to 40 C.F.R. § 745.90(b)(1), renovators must perform or direct workers who perform all work practice standards in 40 C.F.R. § 745.85.

8. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). 15 U.S.C. § 2689. Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

9. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

10. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt

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Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. *See* Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340, 75345 (Issued Dec. 11, 2008) (codified at 40 C.F.R. § 19.4)

11. Failure to comply with any regulatory requirement of the RRP Rule constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689. Pursuant to TSCA Section 16, 15 U.S.C. § 2615, EPA may seek the assessment of civil and/or criminal penalties for violations of TSCA Section 409, 15 U.S.C. § 2689.

III. GENERAL ALLEGATIONS

12. Respondent is a company incorporated in New Hampshire with its principal place of business located at 75 Chapman Drive, Rochester, New Hampshire.

13. Respondent is a “firm” as defined at 40 C.F.R. § 745.83.

14. Respondent is a residential and commercial construction contractor.

15. Respondent is a “renovator” as defined in 40 C.F.R. § 745.83.

16. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, “target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled, or any 0-bedroom dwelling.

17. Respondent conducted the following three renovation projects in 2012 in target housing that were subject to the RRP Rule. No children resided at these properties;

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- a. In November and December 2012, Respondent conducted a renovation at 182 Littleworth Road, Madbury, NH in which Respondent remodeled a bathroom and built a bathroom addition. This property had been fully renovated in the 1990s;
- b. In October and November 2012, Respondent conducted a renovation at 49 Dennett Road, North Berwick, ME in which Respondent removed and replaced 13 wooden windows;
- c. From October through December 2012, Respondent conducted a renovation at 41 Glenwood Avenue, Dover, NH in which it constructed a new addition and remodeled a kitchen and bathroom.

18. The renovation projects described in paragraph 17 above constituted “renovations” as defined in 40 C.F.R. § 745.83.

19. The renovations described in paragraph 17 above, were conducted at “target housing,” as defined in 40 C.F.R. § 745.83.

20. The renovations that Respondent performed at the target housing properties listed in paragraph 17 did not constitute: (a) minor repairs and maintenance activities that disrupted 20 square feet or less of painted surface per component; (b) emergency renovation operations; (c) renovations in which a written determination has been made by an inspector (certified pursuant to either 40 C.F.R. § 745.226 or a State or Tribal certification program authorized pursuant to 40 C.F.R. § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, as those activities are described in 40 C.F.R. § 745.82.

21. None of the properties listed in paragraph 17 were, at the time of the violations

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alleged herein, housing for the elderly or persons with a disability, as defined by 40 C.F.R. § 745.103.

22. None of the properties listed in paragraph 17 were, at the time of the violations alleged herein, "0-bedroom dwellings," as defined by 40 C.F.R. § 745.103.

23. On August 1, 2013, a representative of EPA conducted an inspection at Respondent's office to determine its compliance with the RRP Rule. Based on the inspection, EPA alleges the violations in Counts 1 through 5 below.

IV. VIOLATIONS

Count 1 - Failure to provide a lead-safe renovation pamphlet

24. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation shall provide the owner of the unit with a full and complete copy of an EPA-developed or EPA-approved lead-safe renovation pamphlet ("lead pamphlet"), as defined at 40 C.F.R. § 745.83, and either: (i) obtain from the owner a written acknowledgment that the owner has received the lead pamphlet; or (ii) obtain a certificate of mailing at least seven days prior to the renovation

25. Respondent did not provide a copy of the lead pamphlet to the owners of the target housing properties listed paragraph 17 above, no more than 60 days before Respondent began renovation activities at the properties, as required by 40 C.F.R. § 745.84(a)(1).

26. Respondent did not obtain from the three owners of the target housing properties listed in paragraph 17, written acknowledgment that such owner received from Respondent a copy of the lead pamphlet prior to the start of the renovation, in violation of 40 C.F.R.

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§ 745.84(a)(1)(i) at least 7 days prior to initiating renovation activities at the properties, certificates of mailing the lead pamphlet, in violation of 40 C.F.R. § 745.84(a)(1)(ii).

27. Respondent's failure to: (a) provide a copy of the lead pamphlet to three owners of the target housing properties listed in paragraph 17 above, and (b) obtain a written acknowledgment that the owners or obtain certificates of mailing at least seven days prior to renovations, on three occasions, constitutes three violations of 40 C.F.R. § 745.84(a)(1) and TSCA Section 409, 15 U.S.C. § 2689. Respondent is, thus, subject to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

Count 2 – Failure of a firm to obtain initial certification

28. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (b). Pursuant to 40 C.F.R. § 745.89(a), firms performing renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

29. Respondent did not obtain firm certification before performing the renovations of target housing described in paragraph 17 above. Moreover, none of the renovations described in paragraph 8 above qualified for an exception identified in § 745.82(a) or (b).

30. Respondent's failure to obtain certification from EPA prior to performing the three renovations of target housing described in paragraph 17 above, violates 40 C.F.R. § 745.81(a)(2)(ii), 40 C.F.R. § 745.89(a) and TSCA Section 409, 15 U.S.C. § 2689. Respondent is, thus, subject to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

Count 3 – Failure of a firm to ensure that all individuals performing renovation activities are certified or trained

31. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

32. Respondent did not ensure that all individuals performing renovation activities on behalf of the firm at the renovation projects described in paragraph 17 were either certified renovators or had been trained by a certified renovator in accordance with § 745.90.

33. Respondent's failure to ensure that all individuals performing renovation activities on behalf of the firm at the renovation projects described in paragraph 17 were either certified renovators or had been trained by a certified renovator violated 40 C.F.R. § 745.89(d)(1), and TSCA Section 409, 15 U.S.C. § 2689. Respondent is, thus, subject to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

Count 4 – Failure to assign a certified renovator

34. 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 § 745.90.

35. Respondent did not assign a certified renovator to the renovation projects described in paragraph 17 above, and ensure that all of the certified renovator responsibilities were discharged identified in § 745.90.

36. Respondent's failure to assign a certified renovator to the renovation projects described in paragraph 17 above, and ensure that all of the certified renovator responsibilities identified in § 745.90 were discharged violated 40 C.F.R. § 745.89(d)(2) and TSCA Section

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409, 15 U.S.C. § 2689. Respondent is, thus, subject to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

Count 5 – Failure to post signs in the work area

37. Pursuant to 40 C.F.R. 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

38. Respondent did not post any signs in the work area at each of the renovation projects described in paragraph 17 above.

39. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed at the renovation projects described on paragraph 17 above, violated 40 C.F.R. 745.85(a)(1) and TSCA Section 409, 15 U.S.C. § 2689. Respondent is, thus, subject to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

TERMS OF SETTLEMENT

40. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted.

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Respondent waives any defenses it might have as to jurisdiction, venue, and statute of limitations.

41. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement. Without admitting or denying the factual findings or allegations herein, Respondent consents to the terms of this CAFO.

42. This CAFO shall apply to and be binding upon Respondent, its successors, and assigns.

43. Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

44. Respondent certifies that it is now operating its business in compliance with the Sections 402(c)(3) and 406(b) of TSCA and the RRP Rule.

45. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), in light of the nature of the alleged violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is fourteen thousand nine hundred fifty dollars (\$14,950), due and payable in three (3) installments over eighteen (18) months at three (3) percent interest, according to the following schedule:

(a) the first payment of \$5,000 shall be made within 30 days of the effective date of this CAFO;

(b) the second payment of \$5,274 shall be made within 360 days of the effective date of this CAFO;

(c) the third payment of \$5,024 shall be made within 540 days of the effective date of this CAFO.

(d) Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts

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owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d).

(e) If Respondent fails to make either the first or second payment in subparagraph (c) above by its due date, the entire remaining balance of the penalty shall be due and payable immediately. Interest, late charges and attorneys' fees shall apply as set forth in subparagraph (d) above.

46. Each payment shall be made as follows: Respondent shall submit a check, with the title of the CAFO ("In Re: Groen Builders") and docket number ("TSCA-01-2014-0038") noted on the check, to the order of the "Treasurer, United States of America," in the proper amount to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check must be mailed to the Regional Hearing Clerk:

Handwritten signature and date: 9/23/14

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Mail Code ORA18-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and to:

Andrea Simpson, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail Code OES04-2
5 Post Office Square, Suite 100
Boston, MA 02109-3912

47. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

48. The terms of this CAFO constitute a settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

49. This CAFO does not constitute a waiver, suspension, or modification of the requirements of TSCA, 15 U.S.C. §§ 2601 *et seq.*, or any regulations promulgated thereunder.

50. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments

made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

51. Each party shall bear its own costs and fees in this proceeding, including attorneys fees, and Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

52. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

FOR GROEN BUILDERS, INC.


Eenton Groen, President

9/23/14
Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

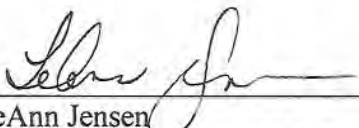

Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

9-26-14
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

9/29/14
Date

