

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

NOV 28 PM 2: 03

In the Matter of:

)
) Docket No. TSCA-07-2012-0022
)
)

Albracht Perma-Siding and Window Co.)

10723 Mockingbird Drive)

Omaha, NE 68127,)

Respondent)
)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Albracht Perma-Siding and Window Co. (Respondent) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I
Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Lead; Renovation,

Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule) pursuant to 15 U.S.C. § 2682, 2686, and 2687.

Section II
Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Albracht Perma-Siding and Window Co., a corporation in good standing under the laws of the state of Nebraska.

Section III
Statutory and Regulatory Background

5. 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. The Act amended TSCA by adding *Title IV - Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings and for standards in conducting those renovation and remodeling activities.

7. 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 TSCA Subchapter IV.

8. On June 1, 1998, EPA promulgated information distribution and recordkeeping requirements in regulations codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard

Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. § 2686.

9. On April 22, 2008, EPA amended and re-codified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule) pursuant to 15 U.S.C. § 2682, 2686, and 2687.

10. 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 trained and certified by an EPA accredited training provider to conduct renovation, remodeling and or painting activities in target housing and or child-occupied facilities; must be employed by an EPA-certified renovation firm and must comply with the specified work practice and recordkeeping requirements of the RRP Rule by April 22, 2008. 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. § 745.85, and with the amended information distribution requirements of the RRP Rule, recodified at 40 C.F.R. § 745.84, by April 22, 2008.

11. 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 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.

12. 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.

13. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

14. 40 C.F.R. § 745.85(a) requires that renovations must 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.

15. 40 C.F.R. § 745.86(a) requires that the firm performing the renovation must 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.

16. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, of the Lead Renovation, Repair and Painting Program (RRP Rule) violates Section of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA,

15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

17. 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 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

Section IV
General Factual Allegations

18. Respondent is and at all times referred to herein was a “person” within the meaning of 40 C.F.R. § 745.83.

19. Respondent is a “renovator” who performed “renovations” as defined by 40 C.F.R. § 745.83 for compensation.

20. On or about March 22, 2011, Respondent signed a contract to perform renovations on the property located at 1637 Holling Drive, Omaha, Nebraska. This property was constructed before 1978.

21. On or about September 1, 2010, Respondent signed a contract to perform renovations on the property located at 5622 Grant Street, Omaha, Nebraska. This property was constructed before 1978.

22. On or about October 14, 2010 Respondent signed a contract to perform renovations on the property located at 1015 Beverly Drive, Omaha, Nebraska. This property was constructed before 1978.

23. On or about October 21, 2010, Respondent signed a contract to perform renovations on the property located at 4941 Browne Street, Omaha, Nebraska. This property was constructed before 1978.

24. On or about October 27, 2010, Respondent signed a contract to perform renovations on the property located at 8116 Gold Street, Omaha, Nebraska. This property was constructed before 1978.

25. On or about November 29, 2010, Respondent signed a contract to perform renovations on the property located at 1315 South 35th Avenue, Omaha, Nebraska. This property was constructed before 1978.

26. On or about February 21, 2011, Respondent signed a contract to perform renovations on the property located at 8723 North 57th Street, Omaha, Nebraska. This property was constructed before 1978.

27. On or about February 23, 2011, Respondent signed a contract to perform renovations on the property located at 3830 Gertrude Street, Bellevue, Nebraska. This property was constructed before 1978.

28. On or about March 8, 2011, Respondent signed a contract to perform renovations on the property located at 77394 County Road P38, Kennard, Nebraska. This property was constructed before 1978.

29. On or about March 23, 2011, Respondent signed a contract to perform renovations on the property located at 6734 Y Street, Lincoln, Nebraska. This property was constructed before 1978.

30. Each of the properties listed in paragraphs 20 - 29 above is "target housing" as defined by 40 C.F.R. § 745.103.

Section V
Violations

The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count I

31. Respondent failed to provide the owners and/or occupants of the property located at 1637 Holling Drive, Omaha, Nebraska, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property, in violation of 40 C.F.R. § 745.84(a).

32. Respondent's failure to perform the act indicated above is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count II

33. Concerning the renovation performed at 1637 Holling Drive, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

34. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count III

35. Concerning the renovation performed at 5622 Grant Street, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

36. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count IV

37. Concerning the renovation performed at 1015 Beverly Drive, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

38. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count V

39. Concerning the renovation performed at 4941 Browne Street, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

40. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under

Section 16 of TSCA, 15 U.S.C. § 2615.

Count VI

41. Concerning the renovation performed at 8116 Gold Street, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

42. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count VII

43. Concerning the renovation performed at 1315 South 35th Avenue, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

44. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count VIII

45. Concerning the renovation performed at 8723 North 57th Street, Omaha, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

46. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under

Section 16 of TSCA, 15 U.S.C. § 2615.

Count IX

47. Concerning the renovation performed at 3830 Gertrude, Bellevue, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

48. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count X

49. Concerning the renovation performed at 77394 County Road P38, Kennard, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

50. Respondent's failure to perform the acts indicated in above are in violations of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count XI

51. Concerning the renovation performed at 6734 Y Street, Lincoln, Nebraska, Respondent failed to maintain records documenting compliance with 40 C.F.R. § 745.85, which is a violation of 40 C.F.R. § 745.86.

52. Respondent's failure to perform the acts indicated in above are in violation of Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section VI
Consent Agreement

53. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

54. Respondent neither admits nor denies the factual allegations set forth above.

55. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

57. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745.

58. The effect of settlement is conditioned upon the accuracy of the Respondent's representations to EPA set forth in Paragraph 57 above.

59. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

60. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Part 745 alleged in this document.

61. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties

and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VII
Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Six-Thousand One Hundred Eighty-Eight Dollars (\$6,188) according to the schedule, which is attached hereto and marked "Exhibit 1". The payment shall be made at the address below. The 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 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

IN THE MATTER OF ALBRACHT PERMA-SIDING AND WINDOW CO.
Docket No. TSCA-07-2012-0022

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219 .

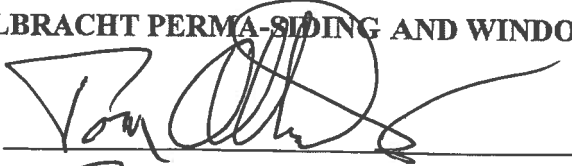
3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

IN THE MATTER OF ALBRACHT PERMA-SIDING AND WINDOW CO.
Docket No. TSCA-07-2012-0022

RESPONDENT
ALBRACHT PERMA-SIDING AND WINDOW CO.

Date: 11-10-12


by

A handwritten signature in black ink, appearing to read "Tom Albracht", written over a horizontal line.

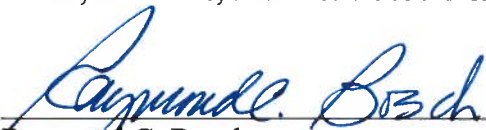
PRESIDENT
TITLE

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/27/12

By: 
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 11/27/12

By: 
Raymond C. Bosch
Office of Regional Counsel

IN THE MATTER OF ALBRACHT PERMA-SIDING AND WINDOW CO.
Docket No. TSCA-07-2012-0022

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Nov. 28, 2012

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

 Perma Siding dba Albracht Perma-Siding Company

Rate Period : Quarterly

Nominal Annual Rate : 1.000 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Penalty	01/01/2013	6,188.00	1		
2 Payment	01/01/2013	780.28	8	Quarterly	10/01/2014

AMORTIZATION SCHEDULE - U.S. Rule (no compounding), 360 Day Year

	Date	Payment	Interest	Principal	Balance
Penalty	01/01/2013				6,188.00
1	01/01/2013	780.28	0.00	780.28	5,407.72
2	04/01/2013	780.28	13.52	766.76	4,640.96
3	07/01/2013	780.28	11.60	768.68	3,872.28
4	10/01/2013	780.28	9.68	770.60	3,101.68
2013 Totals		3,121.12	34.80	3,086.32	
5	01/01/2014	780.28	7.75	772.53	2,329.15
6	04/01/2014	780.28	5.82	774.46	1,554.69
7	07/01/2014	780.28	3.89	776.39	778.30
8	10/01/2014	780.28	1.98	778.30	0.00
2014 Totals		3,121.12	19.44	3,101.68	
Grand Totals		6,242.24	54.24	6,188.00	

Last interest amount increased by 0.03 due to rounding.

IN THE MATTER OF Albracht Perma-Siding and Window Co., Respondent
Docket No. TSCA-07-2012-0022

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Raymond Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Certified Mail to:

Tom Albracht
Albracht Perma-Siding and Window Co.
10723 Mockingbird Drive
Omaha, Nebraska 68127

Dated: 11/28/12


Kathy Robinson
Hearing Clerk, Region 7