

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with, *inter alia*, any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities, including renovations performed for compensation in target housing and child-occupied facilities. These rules are codified at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation.

3.2. “Renovation” is defined at 40 C.F.R. § 745.83 to mean “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces,” including the removal, modification or repair of painted surfaces or painted components and the removal of building components.

3.3. “Building component” is defined at 40 C.F.R. § 745.83 to mean “specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location,” including walls and floors.

3.4. “Target Housing” is defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17), to mean, *inter alia*, “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities.”

3.5. “Person” is defined at 40 C.F.R. § 745.83 to mean, *inter alia*, “any individual, corporation, partnership, or association.”

3.6. “Firm” is defined at 40 C.F.R. § 745.83, to mean, *inter alia*, “a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.”

3.7. “Renovator” is defined at 40 C.F.R. § 745.83 to mean “an individual who either performs or directs workers to 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.”

3.8. Pursuant to 40 C.F.R. § 745.85(a)(1), for occupant protection, firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

3.9. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), the firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

3.10. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

3.11. Pursuant to 40 C.F.R. § 745.85(a)(5)(i)(A), after the renovation has been completed, the firm must collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

3.12. Pursuant to 40 C.F.R. § 745.86(b)(1), firms performing renovations must retain records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation.

3.13. Pursuant to 40 C.F.R. § 745.86(b)(6)(i), firms performing renovations must retain a certification by the certified renovator assigned to the project that training was provided to workers used on the project (topics must be identified for each worker).

3.14. Pursuant to 40 C.F.R. § 745.86(b)(6)(viii), firms performing renovations must retain a certification by the certified renovator assigned to the project that the certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

3.15. Respondent is a “person” as defined at 40 C.F.R. § 745.83.

3.16. Respondent is a “firm” as defined at 40 C.F.R. § 745.83 and was a certified renovation firm from April 15, 2015 to April 15, 2016 (LBPR License Number: LBRPR10511).

3.17. In 2015, Respondent performed “renovations” for compensation, as defined at 40 C.F.R. § 745.83, at the properties located at 2517 NE 47th Avenue (“47th Avenue Property”) and 6447 SE Stark Street (“Stark Property”) in Portland, Oregon 97213.

3.18. The 47th Avenue Property and Stark Property were constructed prior to 1978 and are “target housing” as defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

A. Violations at the 47th Avenue Property

3.19. Respondent failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area at the 47th Avenue Property, in violation of 40 C.F.R. § 745.85(a)(1).

3.20. Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris at the 47th Avenue Property, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

3.21. Respondent failed to contain waste from the renovation at the 47th Avenue Property to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal, in violation of 40 C.F.R. § 745.85(a)(4)(i).

3.22. Respondent failed to collect all paint chips and debris at the 47th Avenue Property and, without dispersing any of it, seal the material in a heavy-duty bag, in violation of 40 C.F.R. § 745.85(a)(5)(i)(A).

3.23. Respondent failed to retain records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation at the 47th Avenue Property, in violation of 40 C.F.R. § 745.86(b)(1).

3.24. Respondent failed to retain a certification by the certified renovator assigned to the project at the 47th Avenue Property that training was provided to workers used on the project, in violation of 40 C.F.R. § 745.86(b)(6)(i).

3.25. Respondent failed to retain a certification by the certified renovator assigned to the project at the 47th Avenue Property that the certified renovator performed the post-renovation cleaning verification, in violation of 40 C.F.R. § 745.86(b)(6)(viii).

B. Violations at the Stark Property

3.26. Respondent failed to retain records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation at the Stark Property, in violation of 40 C.F.R. § 745.86(b)(1).

3.27. Respondent failed to retain a certification by the certified renovator assigned to the project at the Stark Property that training was provided to workers used on the project, in violation of 40 C.F.R. § 745.86(b)(6)(i).

3.28. Respondent failed to retain a certification by the certified renovator assigned to the project at the Stark Property that the certified renovator performed the post-renovation cleaning verification, in violation of 40 C.F.R. § 745.86(b)(6)(viii).

3.29. Under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each such violation, each day such a violation continues.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and with

respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$69,398 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Maria Tartaglia
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Tartaglia.maria@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

Sept 13, 2016

Daniel B. Thomas

DANIEL THOMAS, President
Hammer and Hand, Inc.

DATED:

FOR COMPLAINANT:

9/14/2016

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2016-0159
)	
Hammer and Hand, Inc.,)	FINAL ORDER
)	
Portland, Oregon,)	
)	
Respondent.)	

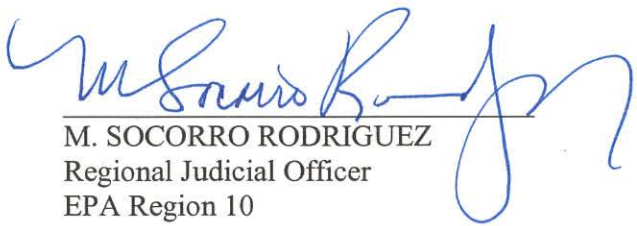
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegateed this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 15th day of September, 2016.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

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September 16

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Hammer and Hand, Inc., Docket No.: TSCA-10-2016-0159**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Grace Hwang
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Daniel Thomas
President
Hammer and Hand, Inc.
1020 SE Harrison Street
Portland, Oregon 97214

DATED this 16 day of September, 2016.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10