

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	
)	DOCKET NO. TSCA-10-2021-0186
)	
WHARTON CONSTRUCTION & RESTORATION LLC)	EXPEDITED SETTLEMENT
)	AGREEMENT AND
)	FINAL ORDER
Brush Prairie, Washington,)	
)	
Respondent.)	
)	

EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER

1. The U.S. Environmental Protection Agency (“EPA”) alleges that Wharton Construction & Restoration LLC (“Respondent”) failed to comply with Section 402(c) of the U.S. Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“TSCA”).

2. The State of Washington is authorized under Section 404(a) of TSCA, 15 U.S.C. § 2684(a), and 40 C.F.R. § 745.324(d) to administer and enforce requirements for a renovation, repair, and painting (RRP) program in accordance with Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with Section 406(b) of TSCA, 15 U.S.C. § 2686(b).

3. Section 404(b) of TSCA, 15 U.S.C. § 2684(b), makes it unlawful for any person to violate or fail or refuse to comply with any requirement of a state program authorized under Section 404 of TSCA, 15 U.S.C. § 2684.

4. The Washington Administrative Code (“WAC”) Title 365 applies to renovations performed for compensation in target housing as specified in the WAC, Chapter 365-230.

5. Under the Washington Administrative Code (“WAC”) 365-230-360(1), Respondent was required to obtain initial firm certification from the Washington State Department of Commerce before performing, offering, or claiming to perform renovations for compensation.

6. On April 27, 2021, Respondent was issued a permit by the City of Vancouver Washington Community and Economic Development Department (RES-298989) to conduct renovations for compensation at 504 West 27th Street, Vancouver, Washington (“Target Property”).

7. The Target Property was constructed in 1951 and is target housing within the meaning of WAC 365-230-020(78).

8. Respondent was not firm certified when it offered, performed or claimed to perform renovation on the Target Property on April 27, 2021, in violation of WAC 365-230-360(1).

9. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). After considering these factors, EPA has determined, and Respondent agrees that an appropriate penalty to settle this action is **\$1,000**.

10. Upon signing this Expedited Settlement Agreement (“Agreement”), Respondent shall deposit the civil penalty amount listed in paragraph 9 by one of the following methods:

10.1 Send a cashier's or certified check or money order with a notation for TSCA-10-2021-0186 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-10-2021-0186
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

10.2 Send a cashier's or certified check or money order by an overnight/common carrier (*e.g.*, FedEx or United Parcel Service of America, Inc.) with a notation for TSCA-10-2021-0186 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

10.3 Make an electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

11. Concurrently with the deposit under paragraph 10, Respondent shall forward a scanned, ink signed PDF copy of the Agreement, and a copy of the cashier's or certified check or money order or documentation of a wire transfer via email to Kim Farnham, Lead-Based Paint Compliance Officer at the following email address, farnham.kim@epa.gov. By written notice to Respondent, EPA may change the address and/or person listed above.

12. EPA is authorized to enter into this Agreement and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. § 22.13(b).

13. In signing this Agreement, for purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (b) neither admits nor denies the factual allegations in this Agreement; (c) consents to the assessment of this penalty; and (d) waives any right to contest the allegations contained in this Agreement, and its right to appeal the attached Final Order.

14. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) is currently in compliance with the firm requirements as stated in WAC 365-230-360(1); (b) agrees to provide a deposit for payment of the civil penalty as set forth in paragraph 10; (c) agrees to submit a true and accurate proof of deposit for payment of the civil penalty as set forth in paragraph 11; and (d) agrees to release said deposit for payment to EPA upon entry of the Final Order attached hereto.

15. Upon the effective date of this Agreement and subsequent payment of the civil penalty as set forth in paragraph 10, Respondent shall be resolved of liability for Federal civil penalties for the violation(s) and facts alleged herein.

16. The penalty, including interest, paid by Respondent pursuant to the requirements of this Agreement, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.

17. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.

18. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

19. Each party shall bear its own costs and fees, if any.

20. The Agreement authorized by EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

21. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

IT IS SO AGREED,

Respondent Name (print): Curtis Wharton

Respondent Title (print): owner

Respondent Signature: 

Date: 8-20-2021

APPROVED BY EPA:

EDWARD
KOWALSKI

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EDWARD KOWALSKI
Date: 2021.08.23
14:34:30 -07'00'

Date: _____

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division
EPA Region 10

FINAL ORDER

Pursuant to the authority of Section 16 of TSCA, 15 U.S.C. § 2615, and according to the terms of the Expedited Settlement Agreement, IT IS HEREBY ORDERED THAT:

This agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 10. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.08.24
11:12:26 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Wharton Construction & Restoration LLC**, Docket No. TSCA-10-2021-0186 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 electronically to:

Kim Farnham
Lead-Based Paint Compliance Officer
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue, Suite 155, 20-C04
Seattle, Washington 98101
Farnham.kim@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Mr. Curtis Wharton
Wharton Construction & Restoration LLC
15204 NE 152nd Avenue
Brush Prairie, Washington 98606
curtis@wharton-construction.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.08.25
10:22:59 -07'00'

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10