

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC

FILED-18APR2018AM9:13

In the Matter of:

HBW Properties, Inc.,
1055 First Street, Suite 200
Rockville, Maryland 20850

a/d/b/a

HBW Group
and
HBW Construction,

RESPONDENT.

Docket No.: TSCA-03-2018-0081

Proceeding Under Sections 16(a) and
409 of the Toxic Substances Control
Act, 15 U.S.C. §§ 2615(a) and 2689.

U.S. EPA-REGION 3-RHC

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CONSENT AGREEMENT

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and HBW Properties, Inc., also doing business as HBW Group and HBW Construction (hereinafter “HBW” or “Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure, during the performance of a renovation for compensation on certain pre-1978 housing, to comply with the Lead Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth and codified by EPA at 40 C.F.R. Part 745, Subpart E.
2. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA” or the “Agency”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, immediately above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. 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 *Subchapter IV – Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.
12. 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.

13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to ensure the effective implementation of TSCA Subchapter IV.
14. Under the RRP Rule, 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 or must be employed by an EPA-certified renovation firm.
15. Pursuant to 40 C.F.R. § 745.83, the term “firm” means “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.”
16. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means “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.”
17. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”
18. Respondent is a Maryland corporation that performs commercial and institutional building construction activities, specializing in nonresidential renovation and repair of commercial office buildings. Respondent does business from an office located at 1055 First Street, Suite 200, Rockville, Maryland 20850.
19. Respondent is and was, at all times herein relevant, a “person” and a “firm,” that performed a “renovation” as those terms are defined at 40 C.F.R. § 745.83, in the common areas of two multi-unit residential properties known as the University Towers, located at 1111 and 1121 University Boulevard West, Silver Springs, Maryland 20902 during the period of early October, 2015 through at least mid-December, 2015.
20. The University Towers consist of two 15-story brick high rise condominium buildings located in suburban Silver Spring, Maryland at the intersection of University Boulevard West and Arcola Avenue. The University Towers contain 535 residential living units, with 269 units in the 1111 University Boulevard West Building (“1111 Building”) and 266 units in the 1121 University Boulevard West Building (“1121 Building”). The 1111 Building was erected in 1967 and the 1121 Building was erected in 1969 as an apartment complex before being converted to a condominium in 1982.

21. On or about July 15, 2015, Respondent entered into a written contract with the University Towers Condominium Association, the owner of the University Towers (hereinafter, the "Target Housing Property") for the purpose of performing a "renovation for compensation," pursuant to 40 C.F.R. § 745.82(a), in the common areas of the 1111 Building and 1121 Building Target Housing Property.
22. In the Fall of 2015, Respondent entered into subcontracts with, and thereby engaged, seven (7) other firms to perform various activities required pursuant to Respondent's July 15, 2015 contract with the University Towers Condominium Association in the Target Housing Property under Respondent's supervision.
23. One of the subcontracts entered into by the Respondent in the Fall of 2015 included a September, 2015 subcontract with a "person" and a "firm" know as T.S.G. Construction, LLC, 6004 Flanders Street, Springfield, Virginia 22150 (hereinafter, "TSG") for its performance of "renovation for compensation" activities, as these terms are defined at 40 C.F.R. § 745.83, that included the removal of finishes, sanding, skim coating and other paint preparation activities associated with the renovation of walls and of certain ceiling components in the common areas of the 1111 Building and 1121 Building Target Housing Property.
24. Another of the subcontracts entered into by the Respondent in the Fall of 2015 included an August, 2015 subcontract with a "person" and a "firm" know as Hunt & Walsh, Inc., 7002 Wellington Road, Manassas, Virginia 20109 (hereinafter, "H&W") for its performance of "renovation for compensation" activities, as these terms are defined at 40 C.F.R. § 745.83, that included sanding, scraping, skim coating and other paint preparation activities associated with the renovation of exterior doors in the common areas of the 1111 Building and 1121 Building Target Housing Property.
25. The "renovation for compensation" activities described in the two preceding paragraphs, which the Respondent contracted with TSG and H&W to perform at the Target Housing Property in the Fall of 2015, did not involve a renovation in any target housing or in any child-occupied facility in which:
 - (1) "a written determination ha[d] been made by an inspector or risk assessor. . . that the components affected by the renovation [we]re free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .," as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) "a certified renovator, using an EPA recognized test kit. . . , ha[d] tested each component affected by the renovation and determined that the components [we]re free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .," as provided at 40 C.F.R. § 745.82(a)(2);
or

- (3) “a certified renovator ha[d] collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . ha[d] determined that the samples [we]re free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(3).
26. On October 20, 2015, EPA received a complaint from a Target Housing Property tenant regarding renovation activities that were then being performed in the common areas of the 1121 Building.
27. On October 29, 2015, two duly authorized EPA Inspectors interviewed the complaining tenant and conducted an inspection of common areas on several floors in the 1111 Building and in the 1121 Building, where renovation activities were then occurring, in order to determine the level of compliance with applicable RRP Rule requirements and prohibitions.
28. On December 15, 2015, two duly authorized EPA Inspectors performed a review of Respondent’s business records (hereinafter “Records Review”), to further determine Respondent’s level of compliance with applicable RRP Rule requirements and prohibitions pertaining to Target Housing Property renovation activities performed under the supervision of, and pursuant to subcontracts with, the Respondent at the University Towers.
29. On May 10, 2017 and again on May 16, 2017, EPA informally requested contracts and other documents, written work descriptions, and other information pertaining to the renovation activities conducted by HBW, and others, at the Target Housing Property. Respondent provided responsive documents and information to EPA on May 17, 2017.
30. On November 30, 2017, EPA issued Respondent a *Notice of Noncompliance and Request to Show Cause* letter (hereinafter, “NON”) alleging RRP Rule violations at the Target Housing Property during renovation activities subcontracted for, and directly supervised by, Respondent in the Fall of 2015. Along with the November 30, 2017 NON, EPA sent Respondent a formal request for additional information pertaining specifically to renovation activities performed by TSG and by H&W at the Target Housing Property in the Fall of 2015. Respondent provided responsive information to EPA on January 23, 2018.

V. VIOLATIONS ALLEGED

COUNT I

Performing Target Housing Renovation for Compensation Without First Obtaining Required Firm Certification

31. The allegations contained in Paragraphs 1 through 30 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

32. 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 40 C.F.R. § 745.89, in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).
33. From on or about early October, 2015 through at least mid-December, 2015, Respondent performed a renovation at the Target Housing Property, which did not qualify for any of the exceptions identified in 40 C.F.R. § 745.82(a) or (c), respectively, without first having obtained initial lead-safe firm certification pursuant to the requirements and provisions set forth at 40 C.F.R. § 745.89.
34. Respondent's performance of a target housing renovation, after April 22, 2010, without first obtaining the required initial lead-safe firm certification from EPA pursuant to 40 C.F.R. § 745.89 requirements, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.81(a)(2)(ii).
35. The Respondent's failure to comply with an applicable 40 C.F.R. § 745.81(a)(2)(ii) RRP Rule requirement by its performance of the above-described Target Housing Property renovation, after April 22, 2010, and without first having obtained a required 40 C.F.R. § 745.89 initial lead-safe firm certification from EPA, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT II

Failing to Ensure That All Individuals

Who Performed Target Housing Property Renovation Activities

Were Either Certified Renovators or Had Been Trained by a Certified Renovator

36. The allegations contained in Paragraphs 1 through 35 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
37. Pursuant to the "firm responsibilities" set forth at 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that: "[a]ll individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with [40 C.F.R.] § 745.90."
38. Pursuant to the "firm responsibilities" set forth at 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 [40 C.F.R.] § 745.90."
39. The renovation activities performed at the Target Housing Property from on or about early October, 2015 through at least mid-December, 2015 by subcontractors TSG and H&W, on behalf of the Respondent, were not performed by certified renovators, or by individuals trained by a certified renovator, in accordance with 40 C.F.R. § 745.90, and no certified renovator was assigned to the University Towers Target Housing Renovation project by the Respondent to discharge the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

40. Respondent's failure to ensure that all individuals who performed University Towers Target Housing Property renovation activities on its behalf were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, and its failure to ensure that a certified renovator was assigned to the University Towers Target Housing Property renovation project to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, constitutes a failure on the part of the Respondent to comply with applicable RRP Rule requirements of 40 C.F.R. § 745.89(d)(1) and (2).
41. The Respondent's failure to comply with applicable RRP Rule requirements of 40 C.F.R. § 745.89(d)(1) and (2) by and through its failure to ensure that all individuals who performed University Towers Target Housing Property renovation activities on its behalf were either certified renovators or had been trained by a certified renovator, and its failure to ensure that a certified renovator was assigned to the University Towers Target Housing Property renovation project to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT III

Failing to Obtain

*Timely Written Acknowledgment of The Target Housing Owner's Receipt
of the EPA-Approved Lead Hazard Information Pamphlet*

42. The allegations contained in Paragraphs 1 through 41 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
43. Pursuant to 40 C.F.R. § 745.84(b)(1), a firm performing a renovation in common areas of multi-unit target housing must provide the owner with the EPA-approved lead hazard information pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*" (hereinafter, "EPA Lead-Hazard Information Pamphlet") within 60 days before beginning renovation activities and either: (i) obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or (ii) obtain a certificate of mailing at least 7 days prior to the renovation.
44. On December 15, 2015, duly authorized EPA Inspectors conducted a Records Review of the business records maintained by the Respondent at its business office with respect to the renovation activities that Respondent performed at the Target Housing Property.
45. At the time of the December 15, 2015 EPA Records Review of its business records, Respondent was unable to provide the EPA Inspectors with any written documentation which acknowledged that the Target Housing Property owner had received the required EPA Lead-Hazard Information Pamphlet from the Respondent at any time prior to the Respondent's initiation and performance of a renovation at the Target Housing Property on or before October, 2015.

46. Respondent's failure to obtain from the Target Housing Property owner a written acknowledgment that the owner had timely received the required EPA Lead-Hazard Information Pamphlet, or to have obtained a certificate of its mailing at least 7 days prior to the renovation, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.84(b)(1).
47. The Respondent's failure to comply with an applicable 40 C.F.R. § 745.81(b)(1) RRP Rule requirement, by and through its failure to obtain a written acknowledgment that the Target Housing Property owner had timely received the required EPA Lead-Hazard Information Pamphlet or to have obtained a certificate of its mailing at least 7 days prior to the renovation, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT IV

Failing to Ensure That

Written Notification and Information was Timely Provided

to Each Unit Affected by Target Housing Property Common Area Renovation Activities

48. The allegations contained in Paragraphs 1 through 47 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
49. Pursuant to 40 C.F.R § 745.84(b)(2), pertaining to renovations in common areas, no more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must: “[c]omply with one of the following: (i) Notify in writing, or ensure written notification of, each affected unit and make the [EPA Lead-Hazard Information Pamphlet] available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the [EPA Lead-Hazard Information Pamphlet] and a copy of the records required by § 745.86(c) and (d), at no cost to the occupants, or (ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the [EPA Lead-Hazard Information Pamphlet] or information on how interested occupants can review a copy of the [EPA Lead-Hazard Information Pamphlet] or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.”
50. On October 29, 2015, a day during which renovation activities were being performed in each of several common area hallways in the 1111 Building and in the 1121 Building Target Housing Property, posted signs that were present in the active renovation areas were not accompanied by any posted copies of the EPA Lead-Hazard Information Pamphlet, or information on how interested occupants could review or obtain a no-cost copy of the EPA Lead-Hazard Information Pamphlet from the renovation firm, nor were

they accompanied by information on how interested occupants could review or obtain a no-cost copy of the records required by 40 C.F.R. § 745.86(c) and (d).

51. During the December 15, 2015 Records Review conducted at the Respondent's business office, Respondent's representatives advised the duly authorized EPA Inspectors conducting the Records Review that they were not familiar with the RRP Rule or its requirements and failed to provide the EPA Inspectors with any documentation or information indicating that Respondent had, within 60 days of initiating renovation activities at the Target Housing Property, provided any written or other form of notification to any of the affected Target Housing Property units that described the general nature and locations of the planned renovation activities, the expected starting and ending dates, or a statement of how Target Housing Property occupants could obtain the EPA Lead-Hazard Information Pamphlet and a no-cost copy of the records required by 40 C.F.R. § 745.86(c) and (d).
52. The Respondent's failure to: (i) ensure, prior to the start of the renovation, that written notification was provided to each affected unit in the Target Housing Property in which the common areas were to be renovated with information on how interested occupants could review or obtain a no-cost copy of the EPA Lead-Hazard Information Pamphlet from the renovation firm and review or obtain a no-cost copy of the records required by 40 C.F.R. § 745.86(c) and (d), or; (ii) accompany posted informational signs with posted copies of the EPA Lead-Hazard Information Pamphlet, or information on how interested occupants could review or obtain a no-cost copy of the EPA Lead-Hazard Information Pamphlet from the renovation firm, and information on how interested occupants could review or obtain a no-cost copy of the records required by 40 C.F.R. § 745.86(c) and (d), in areas likely to be seen by Target Housing Property occupants while the renovation was ongoing, constitutes a failure on the part of the Respondent to comply with one of the alternatively applicable requirements of 40 C.F.R. § 745.84(b)(2)(i) or (ii).
53. The Respondent's failure to comply with one of the applicable requirements of 40 C.F.R. § 745.84(b)(2), by and through its failure, in accordance with 40 C.F.R. § 745.84(b)(2)(i), to provide pre-renovation written notification to each affected unit in the Target Housing Property in which the common areas were to be renovated with information on how interested occupants could review or obtain a no-cost copy of the EPA Lead-Hazard Information Pamphlet from the renovation firm and review or obtain a no-cost copy of the records required by § 745.86(c) and (d), or to comply with the alternatively applicable requirement of 40 C.F.R. § 745.84(b)(2)(ii), by failing to accompany posted informational signs with a posted copy of, or information on how interested occupants could review or obtain a no-cost copy of, the EPA Lead-Hazard Information Pamphlet from the renovation firm and information on how interested occupants could review or obtain a no-cost copy of the records required by 40 C.F.R. § 745.86(c) and (d) in areas likely to be seen by Target Housing Property occupants while the renovation was ongoing, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT V

*Failing to Document Steps Taken to Notify All Multi-Unit
Target Housing Property Occupants of Intended Renovation Activities
and Provide them with the EPA Lead-Hazard Information Pamphlet*

54. The allegations contained in Paragraphs 1 through 53 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
55. Pursuant to 40 C.F.R. § 745.84(b)(3), “[n]o more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must: (3) [p]repare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the [EPA Lead-Hazard Information Pamphlet].”
56. At the time of the December 15, 2015 Records Review conducted by duly authorized EPA Inspectors at the Respondent’s business office, Respondent did not have or maintain any signed or dated statements indicating that it had taken or performed any steps to notify any of the 1111 Building or the 1121 Building Target Housing Property occupants of the intended Fall 2015 renovation activities or to provide them with the EPA Lead-Hazard Information Pamphlet.
57. The Respondent’s failure to prepare, sign, and date a statement describing the steps performed to notify all affected Target Housing Property occupants of the intended Target housing Property renovation activities, and to provide them with the EPA Lead-Hazard Information Pamphlet, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.84(b)(3).
58. The Respondent’s failure to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.84(b)(3) by and through its failure to prepare, sign, and date a statement describing the steps that it was required to perform in order to properly notify all affected Target Housing Property occupants of the intended Target Housing Property renovation activities, and its failure to provide them with the EPA Lead-Hazard Information Pamphlet in accordance with applicable 40 C.F.R. § 745.84(b)(3) requirements, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT VI

Failing to Comply with Occupant Protection Work Practice Standards

59. The allegations contained in Paragraphs 1 through 58 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
60. The “occupant protection” RRP Rule work practice standards set forth at 40 C.F.R. § 745.85(a)(1) provide that: “[f]irms 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. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the

renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29CFR 1926.62(m), additional signs are not required by this section.”

61. On October 29, 2015, a day during which ongoing renovation activities were being performed in each of several common area hallways in the 1111 Building and in the 1121 Building Target Housing Property, there were no signs posted that clearly defined respective work areas or that warned occupants and other persons not involved in renovation activities to remain outside of the respective work areas.
62. 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 of the work area in each of several locations in the Target Housing Property while renovation activities were then and there ongoing, constitutes a failure on the part of the Respondent to comply with an applicable “occupant protection” RRP Rule requirement of 40 C.F.R. § 745.85(a)(1).
63. The Respondent’s failure to comply with an applicable “occupant protection” RRP Rule requirement of 40 C.F.R. § 745.85(a)(1) by and through its failure 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 in each of several locations in the Target Housing Property while renovation activities were then and there ongoing, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT VII

*Failing to Properly Contain the Work Area
by Not Covering All Open Ducts*

64. The allegations contained in Paragraphs 1 through 63 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
65. The interior renovation work area containment requirements of 40 C.F.R. § 745.85 (a)(2)(i)(B) provide that a renovation firm must: “[c]lose and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.”
66. On October 29, 2015, a day during which renovation activities were being performed in each of several common area hallways in the 1111 Building and in the 1121 Building Target Housing Property, there were ducts in several Target Housing Property renovation work areas that were not taped down with plastic sheeting or other impermeable material, such that these ducts remained open and uncovered at times when renovation activities were ongoing.

67. Respondent's failure to close, cover and tape down (with plastic sheeting or other impermeable material) all ducts opening into Target Housing Property renovation work areas while interior Target Housing Property renovation activities were ongoing constitutes a failure on the part of the Respondent to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85 (a)(2)(i)(B).
68. The Respondent's failure to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85 (a)(2)(i)(B) by and through its failure to properly close, cover and tape down (with plastic sheeting or other impermeable material) all ducts opening into Target Housing Property renovation work areas constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT VIII

*Failing to Properly Contain the Work Area
by Not Covering All Windows and Doors*

69. The allegations contained in Paragraphs 1 through 68 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
70. The interior renovation work area containment requirements of 40 C.F.R. § 745.85 (a)(2)(i)(C) provide that a renovation firm must: “[c]lose windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.”
71. On October 29, 2015, a day during which renovation activities were being performed in each of several common area hallways in the 1111 Building and in the 1121 Building Target Housing Property, there was a window in one of the Target Housing Property renovation work area hallways that was not covered with plastic sheeting or other impermeable material, such that the window remained open and uncovered at times when renovation activities were ongoing.
72. Respondent's failure to close and cover (with plastic sheeting or other impermeable material) an open window in an active Target Housing Property interior renovation work area, constitutes a failure on the part of the Respondent to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85 (a)(2)(i)(C).
73. The Respondent's failure to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85 (a)(2)(i)(C) by and through its failure to properly close and cover (with plastic sheeting or other impermeable material) an open window in an active Target Housing Property interior renovation work area, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT IX

*Failing to Properly Contain the Work Area
by Not Implementing Applicable Floor Containment Measures*

74. The allegations contained in Paragraphs 1 through 73 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
75. The interior renovation work area containment requirements of 40 C.F.R. § 745.85 (a)(2)(i)(D) provide that a renovation firm must: “[c]over the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.”
76. On October 29, 2015, a day during which renovation activities were being performed in each of several common area hallways in the 1111 Building and in the 1121 Building Target Housing Property, carpeted common area hallways in several of the Target Housing Property renovation work areas were not then covered with taped down plastic sheeting or with other impermeable material and no other containment system measures were then being employed to contain dust from ongoing renovation activities.
77. Respondent’s failure to cover carpeted common area hallways in several of the Target Housing Property renovation work areas, or to otherwise employ containment system measures sufficient to contain the renovation activity dust from Target Housing Property floor surfaces, constitutes a failure on the part of the Respondent to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85 (a)(2)(i)(D).
78. The Respondent’s failure to comply with an applicable interior renovation work area containment requirement of 40 C.F.R. § 745.85(a)(2)(i)(D) by and through its failure to cover carpeted common area hallways in several of the Target Housing Property renovation work areas, or to otherwise employ containment system measures sufficient to contain the renovation activity dust from Target Housing Property floor surfaces, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT X

Employing Prohibited and Restricted Work Practices

79. The allegations contained in Paragraphs 1 through 78 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
80. Pursuant to 40 C.F.R. § 745.85(a)(3)(ii), prohibited and restricted renovation activity work practices include: “[t]he use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle

gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.”

81. On October 29, 2015, renovation activities that included the use of machines designed to remove paint through high speed operation, including sanding and grinding, without required HEPA exhaust control, were employed in common hallway areas of the 1111 Building and 1121 Building in the Target Housing Property.
82. Respondent’s failure to prevent the use of machines designed to remove paint or other surface coatings through high speed operation sanding and grinding, without required HEPA exhaust control, during Target Housing Property renovation activities constitutes a use of prohibited and restricted work practices and a failure to comply with the applicable requirements of 40 C.F.R. § 745.85(a)(3)(ii).
83. The Respondent’s failure to comply with the applicable requirements of 40 C.F.R. § 745.85(a)(3)(ii) by and through its failure to prevent the use of machines designed to remove paint or other surface coatings through high speed operation sanding and grinding, without required HEPA exhaust control, during Target Housing Property renovation activities, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT XI

Failing to Maintain and Make Available Required Lead-Safe Work Practice Records

84. The allegations contained in Paragraphs 1 through 83 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
85. 40 C.F.R. § 745.86(a) provides, in relevant and applicable part, that: “[f]irms performing renovations 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.”
86. Pursuant to 40 C.F.R. § 745.86(b), records that must be retained pursuant to the requirements of 40 C.F.R. § 745.86(a) include, where applicable, the records identified in 40 C.F.R. § 745.86(b)(1) including, but not limited to, records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in 40 C.F.R. § 745.82(a).
87. On December 15, 2015, at the time of the Records Review conducted by duly authorized EPA Inspectors at the Respondent’s business office, Respondent failed to have and maintain, or to then make available to the EPA Inspectors, applicable records and/or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation conducted in the University Towers

- prior to the October 2015 commencement of renovation activities in this multi-unit Target Housing Property, as required pursuant to 40 C.F.R § 745.82(a).
88. Respondent's December 15, 2105 failure to have and maintain, or to make available to the EPA Inspectors, applicable records and/or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation conducted in the University Towers prior to the October, 2015 commencement of the renovation activities in this multi-unit Target Housing Property, constitutes a violation of the recordkeeping requirement of 40 C.F.R. § 745.86(a)(1).
89. The Respondent's failure to comply with the applicable recordkeeping requirements of 40 C.F.R. § 745.86(a)(1) by and through its December 15, 2015 failure to have and maintain, and to make available to the EPA Inspectors, applicable records and/or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation conducted in the University Towers prior to the October, 2015 commencement of the renovation activities in this multi-unit Target Housing Property, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

VI. CIVIL PENALTY

90. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Forty Thousand Dollars (\$40,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty of **Forty Thousand Dollars (\$40,000.00)** within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
91. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP")*, dated August 2010. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the January 11, 2018 Memoranda by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*.

92. Payment of the civil penalty amount in Paragraph 90, above (including applicable accrued interest and late penalty payments, if any), shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2018-0081**;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, 513-487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

93. Respondent may also pay the civil penalty amount in Paragraph 90, above (including applicable accrued interest and late penalty payments, if any), electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

94. A copy of each check issued by, and/or of each electronic transfer payment made by, the Respondent shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

95. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
96. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
97. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
98. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

99. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 16 of TSCA, 15 U.S.C. § 2615, for the specific violations alleged in Section V ("Violations Alleged"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

100. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

101. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of TSCA and 40 C.F.R. Part 745.

X. RESERVATION OF RIGHTS

102. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

103. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

104. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

105. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.


XIV. EXECUTION

106. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

*In the Matter of: HBW Properties, Inc.,
a/d/b/a HBW Group and HBW Construction*

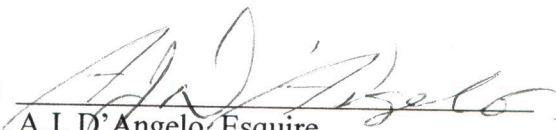
*Consent Agreement
Docket No. TSCA-03-2018-0081*

For Respondent:

Date: 4/2/2018 By: 
Mr. Philip Scott, President
HBW Properties, Inc.

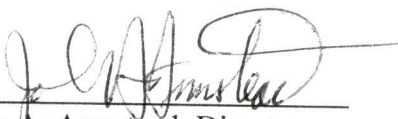
For Complainant:

Date: 4/9/2018

By: 
A.J. D'Angelo, Esquire
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 4.12.18

By: 
John A. Armstead, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

HBW Properties, Inc.,
1055 First Street, Suite 200
Rockville, Maryland 20850

a/d/b/a

HBW Group
and
HBW Construction,

RESPONDENT.

U.S. EPA-REGION 3-RHC
FILED-18APR2018am9:14

Docket No.: TSCA-03-2018-0081

Proceeding Under Sections 16(a) and
409 of the Toxic Substances Control
Act, 15 U.S.C. §§ 2615(a) and 2689.

FINAL ORDER

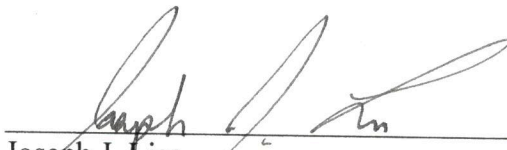
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, HBW Properties, Inc., a/d/b/a HBW Group and HBW Construction, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

WHEREFORE, pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, with respect to violations of the Residential Property Renovation requirements of 40 C.F.R. Part 745, Subpart E, and having determined, based on the

representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon a consideration of, *inter alia*: the statutory penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B); EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP")*, dated August 2010, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the January 11, 2018 Memoranda by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*, **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Forty Thousand Dollars (\$40,000.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or his designee, the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: April 17, 2018



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
HBW Properties, Inc.,)	
1055 First Street, Suite 200)	
Rockville, Maryland 20850)	Docket No.: TSCA-03-2018-0081
)	
a/d/b/a)	
)	
HBW Group)	Proceeding Under Sections 16(a) and
and)	409 of the Toxic Substances Control
HBW Construction,)	Act, 15 U.S.C. §§ 2615(a) and 2689.
)	
)	
RESPONDENT.)	

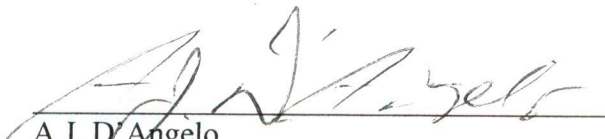
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order (collectively, "CAFO"). I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via *Certified Mail, Return Receipt Requested, Postage Prepaid* (**Article No. 7001 2510 0001 1042 9603**), to the following person at the following address:

Mr. Jeffrey M. Karp, Esquire
Sullivan & Worcester
1666 K Street, NW
Washington, DC 20006

(Counsel for Respondent HBW Properties, Inc.)

4/18/2018
Date


A.J. D'Angelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480