

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(5), 22.13(b) and 18(b)(2) and (3).

GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, the Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. 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.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. 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.
12. 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.”
13. 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.”

14. 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.”
15. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “person” and a “firm,” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83 at the properties located at 1405 Ridge Road, Lancaster, Pennsylvania (“1405 Ridge Rd.”), 1010 Wheatland Avenue, Lancaster, Pennsylvania (“1010 Wheatland Ave.”), and 521 Fairview Road, New Providence, Pennsylvania (“521 Fairview Rd.”).
16. The properties, referred to in Paragraph 15, above, were constructed prior to 1978 and are “target housing” as that term is defined at 40 C.F.R. § 745.103.
17. Respondent entered into a contract on or about June 29, 2017 for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. §745.82(a) at 1405 Ridge Rd.
18. Respondent entered into a contract on or about June 9, 2016 for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. §745.82(a) at 1010 Wheatland Ave.
19. Respondent entered into a contract on or about October 25, 2016 for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. §745.82(a) at 521 Fairview Rd.
20. The “renovations for compensation” performed at the properties described in paragraphs 17 through 19, above, did not involve a renovation in target housing or a 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 are 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 . . ., has tested each component affected by the renovation and determined that the components are 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 has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . has determined that the samples are 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).
21. On November 15, 2017, Complainant conducted an inspection of Respondent’s business records, to further determine Respondent’s level of compliance with the RRP Rule in

regards to certain renovation activities performed by Respondent at the properties described in paragraphs 15, above.

VIOLATIONS ALLEGED

Counts 1-3

(Failure to Provide the adult Occupants of the Target Housing with the EPA *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*)

22. The allegations contained in Paragraphs 1 through 21 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
23. Pursuant to 40 C.F.R. § 745.84(a)(2), a firm performing a renovation must provide the adult occupant of the unit with the EPA pamphlet entitled, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* (“Renovate Right Pamphlet”), and either obtain the adult occupant’s written acknowledgement that the adult occupant received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation.
24. At the time of the November 15, 2017 inspection, Respondent had not provided the adult occupants of the “target housing” located at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd., the Renovate Right Pamphlet for the renovation performed on such “target housing” as described in Paragraphs 17 through 19, above.
25. **Counts 1-3:** Pursuant to 40 C.F.R. § 745.84(a)(2), failure to provide the adult occupant of the “target housing” located at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. with the Renovate Right Pamphlet during the renovations, referred to in Paragraphs 17 through 19, above, constitute violations by Respondent of 40 C.F.R. § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts 4-6

(Failure to Maintain Records)

26. The allegations contained in Paragraphs 1 through 25 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
27. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart, 40 C.F.R. § 745, Subpart E, for a period of 3 years following completion of the renovation.
28. Pursuant to 40 C.F.R. § 745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

29. At the time of the November 15, 2017 inspection, Respondent had not retained records for the renovations performed at the “target housing” located at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. as referred to in Paragraphs 17 through 19, above, documenting a certified renovator performed or directed workers to perform the tasks required by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
30. **Counts 4-6:** Pursuant to 40 C.F.R. § 745.86, Respondent’s failure to retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), during the renovations at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. as referred to in Paragraphs 17 through 19, above, constitute violations by Respondent of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 7
(Failure to Obtain 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. § 745.89(b)(1)(iii), if a firm fails to obtain recertification before the firm’s current certification expires, the firm must not perform renovations until it is certified anew pursuant to 40 C.F.R. § 745.89(a).
33. On June 29, 2017, June 9, 2016, and on October 25, 2016, Respondent performed a renovation at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. as referred to in Paragraphs 17 through 19, above, respectively,
34. At the time of the renovations performed on June 29, 2017, June 9, 2016, and on October 25, 2016, Respondent had not obtained recertification as required by 40 C.F.R. § 745.89(b)(1)(iii).
35. **Count 7:** Pursuant to 40 C.F.R. § 745.89(b)(1)(iii), Respondent failed to obtain the firm’s recertification from EPA prior to performing renovations at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. as referred to in Paragraphs 17 through 19, above, constitutes a violation by Respondent of 40 C.F.R. § 745.89(b)(1)(iii) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts 8-10
(Failure to Ensure EPA-Certified Renovators were Assigned to the Renovations)

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 40 C.F.R. § 745.89(d)(2), firms are required to 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.
38. On June 29, 2017, June 9, 2016, and on October 25, 2016, Respondent failed to ensure that a certified renovator was assigned to the renovations performed at 1405 Ridge Rd., 1010 Wheatland Ave., and 521 Fairview Rd. as referred to in Paragraphs 17 through 19, above, respectively,
39. **Counts 8-10:** Pursuant to 40 C.F.R. § 745.89(d)(2), Respondent's failure to ensure that a certified renovator was assigned to each renovation performed by the firm on June 29, 2017, June 9, 2016, and on October 25, 2016 and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 constitute violations by Respondent of 40 C.F.R. § 745.89(d)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

CIVIL PENALTY

40. 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 **Two Thousand Five Hundred Dollars (\$2,500.00)** which Respondent shall be liable to pay in accordance with the terms set forth below.
41. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") 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 which reflects the statutory penalty criteria and factors set forth Section 16(a)(2)(B) of TSCA, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation. The civil penalty is also based upon EPA's *Pilot Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* dated March 5, 2017 ("2017 Pilot Graduated Penalty Approach") and an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondent.
42. Payment of the civil penalty amount, and any associated interest, administrative fee, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2019-0106**;

- 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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Louis Ramalho (3RC40)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ramalho.louis@epa.gov

- 43. 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.
- 44. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent’s legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 45. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40

C.F.R § 13.11(a).

46. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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.
47. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).
48. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

49. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
50. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

51. 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.

OTHER APPLICABLE LAWS

52. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the TSCA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

53. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against 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. 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). EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

54. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

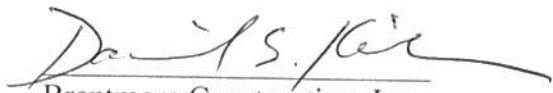
55. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

56. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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.

For Respondent:


Date: Aug. 5, 2019


Brentmore Construction, Inc.
Daniel Kreider, President

For the Complainant:

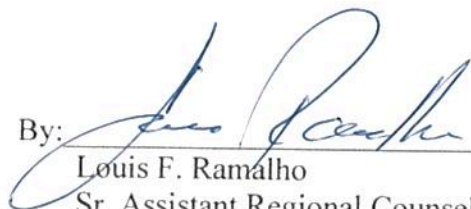
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: AUG 28 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 8/21/2019

By: 
Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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

In the Matter of:)	
)	
Brentmore Construction, Inc. 117 South West End Avenue Lancaster, PA 17602)	U.S. EPA Docket No.: TSCA-03-2019-0106
)	
RESPONDENT.)	U.S. EPA-REGION 3-RHC <small>FILED-3SEP2019AM10:49</small>
)	
)	Proceeding Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. Section 2615(a)
)	
)	

FINAL ORDER

The Complainant, the Director for the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III and Respondent Brentmore Construction, Inc. 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.


WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the Lead, Renovation, Repair, and Painting Program, 40 C.F.R. Part 745, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **Two Thousand Five Hundred Dollars (\$2,500.00)** in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689 and the regulations promulgated thereunder.

In re: Brentmore Construction, Inc.
EPA Docket No.: TSCA-03-2019-0106

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the EPA Regional Hearing Clerk.

Date: Sept. 3, 2019



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III

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

In the Matter of:)
)
Brentmore Construction, Inc.)
117 South West End Avenue) **U.S. EPA Docket No.:**
Lancaster, PA 17602) **TSCA-03-2019-0106**
)
RESPONDENT.)
)
)

CERTIFICATE OF SERVICE

I certify that on SEP 03 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Overnight mail to:

Daniel Kreider, President
Brentmore Construction, Inc.
117 South West End Avenue
Lancaster, PA 17602

Copy served via **Hand Delivery or Inter-Office Mail** to:

Louis F.; Ramalho
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC40)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: SEP 03 2019

Berlin Eposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F71 01 9658 8673