



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**AUG 26 2019**

REPLY TO THE ATTENTION OF:

ECP-17J

**CERTIFIED MAIL 7017 3380 0000 7283 2809**  
**RETURN RECEIPT REQUESTED**

Mr. James Hagan  
President  
Hagan Realty, Inc.  
927 East Grand River Avenue, Suite 11  
East Lansing, Michigan 48823

Consent Agreement and Final Order – In the Matter of:  
Hagan Realty, Inc., Docket No. TSCA-05-2019-0013

Dear Mr. Hagan:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 26, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,837 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina Saldivar".

Christina Saldivar  
Pesticides and Toxics Compliance Section

Enclosure

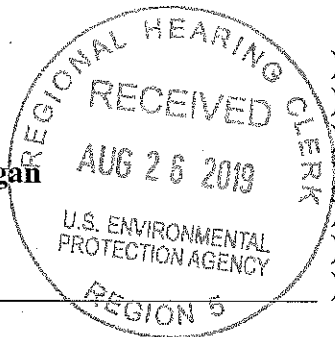
cc: Richard Nagle, (C-13J)  
Charles E. Barbieri, Attorney

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Hagan Realty, Inc.  
East Lansing, Michigan

Respondent.



) Docket No. TSCA-05-2019-0013

) Proceeding to Assess a Civil Penalty Under  
) Section 16(a) of the Toxic Substances  
) Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U. S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Hagan Realty, Inc., a corporation with a place of business located at 927 East Grand River Avenue, Suite 11, East Lansing, Michigan 48823.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the

civil penalty specified below.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations set forth in this CAFO.
9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

**Statutory and Regulatory Background**

10. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and

the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

11. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

14. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator under Subchapter IV to include such recordkeeping and reporting

requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681-2692.

15. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 754.87.

16. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

17. 40 C.F.R. § 745.83 defines *firm* to mean 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.

18. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

19. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

20. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

21. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities on or after April 28, 2010, with exceptions not relevant here. 40 C.F.R. § 745.82.

22. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

23. 40 C.F.R. § 745.86(b)(6) requires firms to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

24. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

25. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$39,873

per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019.

### **General Allegations**

26. Complainant incorporates paragraphs 1 through 25 of this CAFO as if set forth in this paragraph.

27. At all times relevant to this CAFO, Respondent's corporation was a firm as defined by 40 C.F.R. § 745.83.

28. On August 15, 2018, Complainant issued a request for information to Respondent, seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgement of receipt of a pamphlet by the owners and occupants of residential housing.

29. On August 23, 2018, Respondent provided Complainant with documents responsive to the request for information referenced in paragraph 28.

30. Based on the information Complainant received, and building-year information publicly available on the property value assessment website (accessed on November 5, 2018) of the City of East Lansing, Respondent performed, or directed workers to perform for compensation, the following modifications of existing structures that resulted in disturbances of painted surfaces as detailed in this Table:

Line Number	Property Address	Residence Type	Built Year	Work Performed	Scope of Work
1	275 Milford Street, East Lansing, MI 48823	Single-Family	1941	09/05/2017	Exterior scraping of garage
2	512 Abbot Road, East Lansing, MI 48823	Single-Family	1926	04/25/2018	Exterior scraping and painting
3	211 N Harrison Road, East Lansing, MI 48823	Single-Family	1930	04/25/2018	Exterior scraping and painting
4	436 Charles Street, East Lansing, MI 48823	Single-Family	1926	07/23/2018	Exterior scraping and painting

31. At the four renovations referenced in paragraph 30, Respondent performed or directed to perform modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore renovations as defined in 40 C.F.R. § 745.83.

32. The four renovations referenced in paragraph 30 were each performed at residential housing built prior to 1978, and therefore the residential housing was target housing as defined in 40 C.F.R. § 745.103.

**Count 1 – Failure to Cover the Ground with Plastic Sheeting**

33. Complainant incorporates paragraphs 1 through 32 of this CAFO as if set forth in this paragraph.

34. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires the firm 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, whichever is greater, unless the property line prevents 10 feet of such ground covering.

35. Respondent performed the renovation at 436 Charles Street, referenced in paragraph 30, but 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.

36. Respondent's failure 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 during the renovation at 436 Charles Street, referenced in paragraph 30, constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Counts 2 – Failure to Retain All Records Necessary to Demonstrate Compliance with 40**

**C.F.R. Part 745, Subpart E**

37. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

38. 40 C.F.R. § 745.86(b)(6) requires a firm to retain the following records:

- a. Documentation of compliance with the work practice standards in 40 C.F.R. § 745.85,
- b. Documentation that a certified renovator was assigned to the project,

- c. Documentation that the certified renovator provided on-the-job training for workers used on the project,
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and
- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

39. In all four renovations from Septemeber 5, 2017 to July 23, 2018, described in paragraph 30, Respondent failed to retain:

- a. Documentation of compliance with the work practice standards in 40 C.F.R. § 745.85,
- b. Documentation that a certified renovator was assigned to the project,
- c. Documentation that the certified renovator provided on-the-job training for workers used on the project,
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and
- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

40. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of all 4 renovations described in paragraph 30 constitutes a violation of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

### Civil Penalty

41. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$5,837. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

42. Within 30 days after the effective date of this CAFO, Respondent must pay the \$5,837 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The cashier's check or certified check must note the following: the case title ("In the Matter of Hagan Realty, Inc.,"), and the docket number of this CAFO.

43. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 42. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Christina Saldivar (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Richard Nagle (C-13J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

44. This civil penalty is not deductible for federal tax purposes.
45. If Respondent does not timely pay the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
46. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### General Provisions

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: nagle.richard@epa.gov (for Complainant), and cbarbieri@fosterswift.com (for Respondent).

48. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO. This settlement is made without an admission of liability and this CAFO is not admissible in any other proceeding.

49. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

51. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

52. The terms of this CAFO bind Respondent and its successors and assigns.

53. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees in this action.

55. This CAFO constitutes the entire agreement between the parties.

56. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order  
In the Matter of: Hagan Realty, Inc.  
Docket No. TSCA-05-2019-0013**

**Hagan Realty, Inc.**

7-31-2019  
Date

James Hagan  
James Hagan  
President  
Hagan Realty, Inc.

**United States Environmental Protection Agency, Complainant**

8/20/2019  
Date

Michael D. Harris  
Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order**  
**In the Matter of: Hagan Realty, Inc.**  
**Docket No. TSCA-05-2019-0013**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

8/23/19  
Date

Ann L. Coyle  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Hagan Realty, Inc.**  
**Docket Number: TSCA-05-2019-0013**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on August 26, 2019, this day in the following manner to the addressees:

Copy by certified mail

Return Receipt Request to:

Mr. James Hagan  
Hagan Realty, Inc.  
927 East Grand River Avenue, Suite 11  
East Lansing, Michigan 48823

Copy by e-mail to

Attorney for Respondent:

Mr. Charles E. Barbieri  
cbarbieri@fosterswift.com

Copy by e-mail to

Attorney of Complainant:

Richard Nagle  
nagle.richard@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: August 26, 2019



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5