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7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. TSCA-09-2023-0072
12)
Kreative Paintworks,)
13)
14 Respondent.)
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16

17 I. CONSENT AGREEMENT

18 The United States Environmental Protection Agency, Region IX (“EPA”), and Kreative
19 Paintworks (the “Respondent”) agree to settle this matter and consent to the entry of this Consent
20 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
21 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action brought against Respondent pursuant to
24 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
25 of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406
26 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at
27 40 C.F.R. Part 745, Subpart E.

28 2. Complainant is the Manager of the Toxics Section in the Enforcement and

1 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
2 bring this action and to sign a consent agreement settling this action.

3 3. Respondent, a California corporation headquartered in Los Angeles, California, is a
4 full service commercial and residential painting company that operates in California and the
5 Western United States.

6 **B. STATUTORY AND REGULATORY BASIS**

7 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745,
8 Subpart E requires a person who performs for compensation a renovation of target housing and
9 child-occupied facilities to provide a lead hazard information pamphlet to the owner and
10 occupant before beginning the renovation.

11 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.
12 Part 745, Subpart E provides requirements for certification of individuals and firms engaged in
13 lead-based paint activities and work practice standards for renovation, repair, and painting
14 activities in target housing and child-occupied facilities.

15 6. “Target housing” means any housing constructed prior to 1978, except housing for the
16 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
17 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
18 U.S.C. § 2681.

19 7. “Person” means any natural or judicial person including any individual, corporation,
20 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
21 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §
22 745.83.

23 8. “Firm” means a company, partnership, corporation, sole proprietorship or individual
24 doing business, association, or other business entity; a Federal, State, Tribal, or local government
25 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

26 9. “Renovation” means the modification of any existing structure, or portion thereof, that
27 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
28 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the

1 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
2 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
3 scraping, or other such activities that may generate paint dust)); the removal of building
4 components (*e.g.*, walls, ceilings, plumbing, windows); weatherization projects (*e.g.*, cutting
5 holes in painted surfaces to install blown-in insulation or to gain access to attics, planning
6 thresholds to install weatherstripping), and interim controls that disturb painted surfaces

7 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
8 745.83.

9 10. “Painted surface” means a component surface covered in whole or in part with paint
10 or other surface coatings. 40 C.F.R. § 745.83.

11 11. “Component or building component” means specific design or structural elements or
12 fixtures of a building or residential dwelling that are distinguished from each other by form,
13 function, and location. These include, but are not limited to interior components such as . . .
14 windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and
15 exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40
16 C.F.R. § 745.83.

17 12. “Renovator” means any individual who either performs or directs workers who
18 perform renovations. A certified renovator is a renovator who has successfully completed a
19 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
20 745.83.

21 13. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead
22 Hazard Information for Families, Child Care Providers and Schools,” developed under Section
23 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal
24 pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same
25 purpose. 40 C.F.R. § 745.83.

26 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
27 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
28 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to

1 exceed \$46,989 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
2 occurred after November 2, 2015, where penalties were assessed on or after January 6, 2023.

3 C. ALLEGED VIOLATIONS

4 15. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

5 16. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined
6 at 40 C.F.R. § 745.83.

7 17. In or around Spring 2021, Respondent performed an exterior “renovation,” as that
8 term is defined at 40 C.F.R. § 745.83, for compensation at the residential property located at 510
9 Spring Street in Los Angeles, California, a historic building otherwise known as “The Lofts at
10 the Security Building” (the “Property”).

11 18. At all times relevant to this CAFO, the Property was “target housing,” as that term is
12 defined at 40 C.F.R. § 745.83.

13 19. Firms that perform renovations for compensation must apply to EPA for certification
14 to perform renovations. 40 C.F.R. § 745.89(a).

15 20. On or after April 22, 2010, no firm may perform a renovation without certification
16 from EPA under 40 C.F.R. § 745.89(a) in target housing or child-occupied facilities unless the
17 renovation is performed in target housing or child-occupied facilities that have been determined
18 to be lead-free pursuant to 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(2)(ii).

19 21. At all times relevant to this CAFO, Respondent did not have a certification from
20 EPA to perform a renovation for compensation at the Property.

21 22. At all times relevant to this CAFO, the Property had not been determined to be lead-
22 free pursuant to 40 C.F.R. § 745.82(a) before the renovation for compensation occurred.

23 23. Respondent’s performance of a renovation for compensation at the Property without
24 certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. §
25 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

26 24. No more than 60 days before beginning renovation activities in any residential
27 dwelling unit of target housing, the firm performing the renovation must provide an adult
28 occupant of the unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 748.83, and either

1 obtain from the adult occupant a written acknowledgment that the adult occupant has received
2 the “pamphlet” or obtain a certificate of mailing at least seven days prior to the renovation. 40
3 C.F.R. § 745.84(b)(1).

4 25. Respondent did not provide an adult occupant of at least one residential dwelling unit
5 of the Property with the “pamphlet” before beginning renovation activities.

6 26. Respondent’s failure to provide an adult occupant of at least one residential dwelling
7 unit of the Property with the “pamphlet” constitutes one violation of 40 C.F.R. § 745.84(b)(1) and
8 Section 409 of TSCA, 15 U.S.C. § 2689.

9 27. Firms performing renovations must comply with the work practice standards of §
10 745.85, including the posting of signs clearly defining the work area and warning occupants and
11 other persons not involved in renovation activities to remain outside of the work area. 40 C.F.R. §
12 745.85(a)(1).

13 28. Respondent did not post signs clearly defining the work area and warning occupants
14 and other persons not involved in renovation activities to remain outside of the work area for the
15 renovation performed at the Property.

16 29. Respondent’s failure to post signs clearly defining the work area and warning
17 occupants and other persons not involved in renovation activities to remain outside of the work
18 area for the renovation performed at the Property constitutes one violation of 40 C.F.R. §
19 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

20 30. Firms performing renovations must comply with the work practice standards of §
21 745.85, including the containment of the work area before the beginning of the renovation so that
22 no dust or debris leaves the work area while the renovation is being performed. In particular, for
23 exterior renovations, the firm must close all doors and windows within 20 feet of the renovation.
24 40 C.F.R. § 745.85(a)(2)(ii)(A).

25 31. Respondent did not contain the work area before the beginning of the renovation at the
26 Property so that no dust or debris left the work area while the renovation was being performed.

27 32. Respondent’s failure to contain the work area before the beginning of the renovation at
28 the Property so that no dust or debris left the work area while the renovation was being performed

1 constitutes one violation of 40 C.F.R. § 745.85(a)(2)(ii)(A) and Section 409 of TSCA, 15 U.S.C. §
2 2689.

3 33. Firms performing renovations must retain documentation of compliance with the
4 requirements of § 745.85, including documentation that: a certified renovator was assigned to
5 the project; a certified renovator provided on-the-job training for workers used on the project; a
6 certified renovator performed or directed workers who performed all of the work practice tasks
7 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning
8 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

9 34. Respondent did not retain documentation for the renovation performed at the
10 Property that: a certified renovator was assigned to the project; a certified renovator provided
11 on-the-job training for workers used on the project; a certified renovator performed or directed
12 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
13 renovator performed the post-renovation cleaning verification described in § 745.85(b).

14 35. Respondent's failures to retain documentation for the renovation performed at the
15 Property that: a certified renovator was assigned to the project; a certified renovator provided
16 on-the-job training for workers used on the project; a certified renovator performed or directed
17 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
18 renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute
19 four violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

20 36. Firms performing renovations must ensure that a certified renovator is assigned to
21 each renovation performed by the firm and discharges all of the certified renovator
22 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

23 37. Respondent did not ensure that a certified renovator discharged all of the certified
24 renovator responsibilities identified in § 745.90 for the renovation performed at the Property.

25 38. Respondent's failure to ensure that a certified renovator discharged all of the certified
26 renovator responsibilities identified in § 745.90 for the renovation performed at the Property
27 constitutes one violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. §
28 2689.

1 D. RESPONDENT'S ADMISSIONS

2 39. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
3 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
4 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
5 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
6 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
7 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
8 proposed Final Order contained in this CAFO.

9 E. CIVIL ADMINISTRATIVE PENALTY

10 40. In full and final settlement of the violations specifically alleged in Section I.C of this
11 CAFO, Respondent shall pay a civil administrative penalty of TEN THOUSAND DOLLARS
12 (\$10,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of
13 this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including
14 the name and docket number of this case, for the amount, payable to "Treasurer, United States of
15 America," (or be paid by one of the other methods listed below) and sent as follows:

16 Regular Mail:

17 U.S. Environmental Protection Agency
18 Fines and Penalties
19 Cincinnati Finance Center
20 PO Box 979077
21 St. Louis, MO 63197-9000

22 Wire Transfers:

23 Wire transfers must be sent directly to the Federal Reserve Bank in New
24 York City with the following information:
25 Federal Reserve Bank of New York
26 ABA = 021030004
27 Account = 68010727
28 SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL

1 ATTN Box 979077
2 St. Louis, MO 63101

3 ACH (also known as Remittance Express or REX):

4 Automated Clearinghouse (ACH) payments to EPA can be made through
5 the U.S. Treasury using the following information:

6 U.S. Treasury REX/Cashlink ACH Receiver
7 ABA = 051036706
8 Account = 31006, Environmental Protection Agency
9 CTX Format Transaction Code 22 – checking

10 Physical location of U.S. Treasury facility:

11 5700 Rivertech Court
12 Riverdale, MD 20737

13 Remittance Express (REX) = (866) 234-5681

14 Online Payment:

15 This payment option can be accessed from the information below:

16 www.pay.gov
17 Enter “SFO 1.1” in the search field
18 Open form and complete required fields

19 If clarification regarding a particular method of payment remittance is
20 needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

21 A copy of each check, or notification that the payment has been made by one of the other
22 methods listed above, including proof of the date payment was made, shall be sent with a
23 transmittal letter, indicating Respondent’s name, the case title, and docket number, to the
24 following regular mail or email addresses:

25 Regional Hearing Clerk
26 Office of Regional Counsel (ORC-1)
27 U.S. Environmental Protection Agency, Region IX
28 75 Hawthorne Street
29 San Francisco, CA 94105
30 R9HearingClerk@epa.gov

31 Christopher Rollins
32 Waste and Chemicals Section
33 Enforcement and Compliance Assurance Division (ENF-2-2)
34 U.S. Environmental Protection Agency, Region IX
35 75 Hawthorne Street
36 San Francisco, CA 94105
37 rollins.christopher@epa.gov

1 41. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
2 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
3 use such payment as a tax deduction.

4 42. If Respondent fails to pay the assessed civil administrative penalty of TEN
5 THOUSAND DOLLARS (\$10,000), as identified in Paragraph 40, by the deadline specified in
6 that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED
7 DOLLARS (\$500) per day in addition to the assessed penalty. Stipulated penalties shall accrue
8 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
9 become due and payable upon EPA's written request. Failure to pay the civil administrative
10 penalty specified in Paragraph 40 by the deadline specified in that Paragraph may also lead to any
11 or all of the following actions:

12 (1) EPA may refer the debt to a credit reporting agency, a collection
13 agency, or to the Department of Justice for filing of a collection action in the appropriate United
14 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
15 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
16 collection proceeding.

17 (2) The U.S. Government may collect the debt by administrative offset
18 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
19 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
20 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
21 C.F.R. §§ 13(C) and 13(H).

22 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
23 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
24 business with EPA or engaging in programs EPA sponsors or funds.

25 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
26 Government may assess interest, administrative handling charges, and nonpayment penalties
27 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
28 civil administrative penalty specified in Paragraph 40 by the deadline specified in that Paragraph.

1 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
2 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
3 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
4 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
5 (30) days of the effective date of this CAFO.

6 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
7 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
8 based on either actual or average cost incurred (including both direct and indirect costs), for
9 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

10 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
11 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
12 may be assessed on all debts more than ninety (90) days delinquent.

13 F. CERTIFICATION OF COMPLIANCE

14 43. In executing this CAFO, Respondent certifies that it is now fully in compliance with
15 the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

16 G. RETENTION OF RIGHTS

17 44. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
18 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
19 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
20 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
21 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
22 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
23 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
24 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

25 45. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
26 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
27 and permits.
28

1 H. ATTORNEYS' FEES AND COSTS

2 46. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
3 this proceeding.

4 I. EFFECTIVE DATE

5 47. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
6 effective on the date that the Final Order contained in this CAFO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

8 J. BINDING EFFECT

9 48. The undersigned representative of Complainant and the undersigned representative of
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
11 of this CAFO and to bind the party he or she represents to this CAFO.

12 49. The provisions of this CAFO shall apply to and be binding upon Respondent and its
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
14 and assigns.

15
16
17 FOR RESPONDENT KREATIVE PAINTWORKS:

18
19 6/6/2023
20 DATE

Dustin Coad

DUSTIN THOMAS COAD
CEO/President
Kreative Paintworks

21
22
23 FOR COMPLAINANT EPA:

24 7/18/2023
25 DATE

MATTHEW SALAZAR
Digitally signed by
MATTHEW SALAZAR
Date: 2023.07.18
11:14:18 -07'00'

MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Kreative Paintworks having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2023-0072) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of TEN
5 THOUSAND DOLLARS (\$10,000) and comply with the terms and conditions set forth in the
6 Consent Agreement.

7
8 **AZUREDE** Digitally signed by
WILKINS AZUREDE WILKINS
Date: 2023.07.19
14:55:56 -07'00'

9 _____
10 DATE

11 _____
12 Azure'De Wilkins
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Kreative
3 Paintworks (TSCA-09-2023-0072) was filed with the Regional Hearing Clerk, and that a true
4 and correct copy of the same was sent to the following parties via electronic mail, as indicated
5 below:

6 **RESPONDENT**

Dustin Thomas Coad
CEO/President
Kreative Paintworks
700 S. Flower Street, Suite 1000
Los Angeles, CA 90017
Dustin@Kreativepaintworks.com
(323) 570-1901

11 **COMPLAINANT**

Edgar P. Coral
Assistant Regional Counsel
U.S. EPA – Region IX
75 Hawthorne Street
San Francisco, CA 94105
Coral.Edgar@EPA.Gov

18 _____
19 Ponly J. Tu Date
20 Regional Hearing Clerk
21 U.S. EPA - Region IX