

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

J & R Construction Services, Inc.

Respondent.

Docket No. **TSCA-04-2022-3106(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is J & R Construction Services, Inc., a corporation doing business in the Commonwealth of Kentucky.

III. GOVERNING LAW

6. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, the EPA Administrator promulgated the “Residential Property Renovation Rules” at 40 C.F.R. Part 745, Subpart E, including the Pre-Renovation Education Rule, Renovation and Repair and Painting Rule and the Lead-Based Paint Activities Rule. It is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with any of the rules issued under 40 C.F.R. Part 745, Subpart E.
7. The term “target housing” is defined at Section 401(17) of TSCA, 15 U.S.C. § 2681, and 40 C.F.R. § 745.103, to mean, in part, any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
8. The term “child-occupied facility” is defined at 40 C.F.R. § 745.83, to mean, in part, a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.
9. The term “pamphlet” is defined at 40 C.F.R. § 745.83, to mean, in part, the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under Section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR § 745.326.
10. The term “renovation” is defined at 40 C.F.R. § 745.83, to mean, in part, 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 following: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping or other such activities that may generate paint dust)); and the removal of building components (e.g., walls, ceilings, plumbing, windows).
11. The term “firm” is defined at 40 C.F.R. § 745.83, to mean a company, partnership, corporation, sole proprietorship or individual doing business, association or other business entity; a Federal, State, Tribal, or local government; or a nonprofit organization.
12. Pursuant to Section 406 of TSCA, 15 U.S.C. § 2686, and 40 C.F.R. § 745.84(a)(1), firms performing renovations are required to provide the owner of any residential unit of target housing with an EPA-approved pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, or any State pamphlet approved by the EPA, no more than 60 days prior to beginning the renovation. Firms performing renovations must also obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovation.

13. Pursuant to 40 C.F.R. § 745.84(d)(1), firms must include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.
14. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without having obtained certification from the EPA under 40 C.F.R. § 745.89(a)(1), which requires firms that perform renovations for compensation to apply to the EPA for certification to perform renovations.
15. 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 or dust sampling until it is certified anew pursuant to 40 C.F.R. § 745.89(b)(1)(iii).
16. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that all individuals performing renovation activities are either certified renovators or have been trained by certified renovators and that the renovation activities are performed in accordance with the work practice standards identified in 40 C.F.R. § 745.85.
17. Pursuant to 40 C.F.R. § 745.80, the "Work Practice Standards" that must be followed by firms performing renovations on target housing include, but are not limited to:
 - a. **Occupant Protection.** Firms 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 occupant. 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.
 - b. **Exterior Renovations.** Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surface undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of ground covering. In some instances, the renovation firm must take precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.
18. Pursuant to 40 C.F.R. § 745.86, firms performing renovations must retain, and, if requested, make them available to the EPA all records to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. Records that must be retained include, but are not limited to, documentation of compliance with the work practice standards, including documentation demonstrating that a certified renovator was assigned to the project, warning signs were posted to the entrances of the work area and the work area was contained in accordance with the requirements.
19. Pursuant to 40 C.F.R. § 745.87(b), failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA Sections 15 and 409 (15 U.S.C. § 2614 and 2689).

20. Persons who violate 40 C.F.R. Part 745, Subpart E, are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

IV. FINDINGS OF FACTS

21. Respondent is and was at all relevant to this CAFO a “firm” that performs “renovations” for compensation as those terms are defined by 40 C.F.R. § 745.83.
22. On February 8, 2021, the EPA received information that Respondent had conducted “renovation” work for compensation at three private residences listed below. The EPA later received records from Respondent on February 24, 2021, April 23, 2021, November 18, 2021, and November 29, 2021, which were reviewed to determine Respondent’s compliance with 40 C.F.R. Part 745, Subpart E in connection with the renovation work conducted at the following addresses on the dates noted (hereinafter “the Properties”):
- a. 313 Irvine Road, Lexington, Kentucky 40502, renovation on or about December 24, 2019;
 - b. 612 Orchard Avenue, Lexington, Kentucky 40502, renovation on or about August 22, 2018; and
 - c. 1860 Gayle Drive, Lexington, Kentucky 40505, renovation on or about May 20, 2020.
23. The Properties were constructed before 1978 and are “target housing” as defined by 40 C.F.R. § 745.103.
24. During a show cause conference call on November 18, 2021, Respondent advised the EPA that the company had conducted testing to determine the presence of lead-based paint at the Properties being renovated. Based on a review of the records submitted to the EPA as set forth in paragraph 22, the EPA alleges that the Respondent did not retain for a period of 3 years following completion of the renovation activities, 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 required by 40 C.F.R. § 745.86(b)(1).

V. ALLEGED VIOLATION

25. Based on a review of the records submitted by the Respondent to the EPA, and on information provided by the Respondent during the Show Cause meeting as set forth in paragraphs 22 and 24 above, the EPA alleges that the Respondent failed to retain for 3 years following completion of the renovations, all records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, in violation of 40 C.F.R. § 745.86(b)(1).

VI. STIPULATIONS

26. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this CAFO;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
 - f. waives its rights to appeal the Final Order accompanying this CAFO.
28. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the "Residential Property Renovation Rules," in 40 C.F.R. Part 745, and the Act, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
 - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
 - f. agrees to comply with the terms of the CAFO.
29. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

30. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **ONE-THOUSAND FOUR HUNDRED DOLLARS (\$1,400.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
31. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by

check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Code: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

32. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

R4_Regional_Hearing_Clerk@epa.gov

and

Yvonne Lawson
TSCA Enforcement Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
lawson.yvonne@epa.gov

33. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2022-3106(b).
34. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
 - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
35. In addition to what is stated in the prior paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
 - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
36. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

37. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
39. Any violation of this CAFO may result in a civil judicial action for or civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
40. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, State, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit, except as expressly provided herein.
41. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
42. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

43. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
44. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the company, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
45. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the company, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
46. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
47. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
48. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
49. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
50. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
51. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
52. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

53. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages

The foregoing Consent Agreement In the Matter of **J & R Construction Services, Inc.**, Docket No. **TSCA-04-2022-3106(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Signature

4/1/2022
Date

Printed Name: JAMES W. MCKINNEY III

Title: President

Address: 633 West main st. Lexington, Ky. 40508

The foregoing Consent Agreement In the Matter of **J & R Construction Services, Inc.**, Docket No. **TSCA-04-2022-3106(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

J & R Construction Services, Inc.

Respondent.

Docket No. **TSCA-04-2022-3106(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of **J & R Construction Services, Inc., Docket No. TSCA-04-2022-3106(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Jimmy McKinney, Owner
J & R Construction Services, Inc.
jimmy@jrCSI.com
633 West Main Street
Lexington, Kentucky 40508
(859) 492-2051

To EPA: Yvonne Lawson
Case Development Officer
lawson.yvonne@epa.gov

Robert Caplan
Senior Attorney
caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960