



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

November 3, 2020

2:24 PM

Received by

EPA Region VIII

Hearing Clerk

DOCKET NO.: TSCA-08-2021-0001

IN THE MATTER OF:

AMERICAN BEST  
ROOFING & REMODELING LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

**SO ORDERED THIS 3RD DAY OF NOVEMBER, 2020.**

KATHERIN  
HALL

Digitally signed by  
KATHERIN HALL  
Date: 2020.11.03  
14:22:07 -07'00'

Katherin E. Hall  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**Docket No. TSCA-08-2021-0001**

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**IN THE MATTER OF:** )  
 )  
**American Best** )  
**Roofing & Remodeling LLC** )  
**1170 S Sheridan Boulevard, Unit B** )  
**Denver, Colorado 80232** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**CONSENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, American Best Roofing & Remodeling LLC (collectively the Parties), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This Consent Agreement is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615 and 2689, and the regulations promulgated under TSCA Subchapter IV, set forth at 40 C.F.R. part 745.

**II. STATUTORY AND REGULATORY BACKGROUND**

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.

5. “Target housing” means any housing constructed prior to 1978, except for 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 zero-bedroom dwelling. 15 U.S.C. § 2681(17).
6. “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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. EPA may assess a civil penalty of up to \$40,576 for each violation of section 409. 15 U.S.C. § 2615, 40 C.F.R. part 19.

### III. RESPONDENT

8. Respondent is a company doing business in the State of Colorado.
9. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a “firm” as defined by 40 C.F.R. § 745.83.

### IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. On April 25, 2018, an authorized representative of the EPA inspected Respondent’s jobsite at 2829 Lowell Boulevard, Denver, Colorado, to determine compliance with the RRP Rule.
12. The jobsite is a residential property constructed prior to 1978 and is “target housing” as the term is defined in 15 U.S.C. § 2681(17).
13. Respondent performed a “renovation,” as the term is defined in 40 C.F.R. § 745.83, by scraping paint from the exterior of the home in preparation for painting.

#### Count 1

14. The “initial certification” requirement at 40 C.F.R. § 745.89(a) provides that firms performing renovations on target housing are required to apply to the EPA for certification.
15. Respondent failed to obtain initial certification from the EPA prior to performing renovations on target housing, as required by 40 C.F.R. § 745.89(a).
16. Respondent’s failure to obtain initial certification constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

### Count 2

17. Firms performing renovations on target housing must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2).
18. Respondent did not assign a certified renovator to this renovation, as required by 40 C.F.R. § 745.89(d)(2).
19. Respondent's failures to assign a certified renovator constitutes a violation of 40 C.F.R. § 745.89(d)(2) and section 409 of TSCA, 15 U.S.C. § 2689.

### Count 3

20. Firms performing renovations on target housing are required, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material to collect falling paint debris, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C).
21. At the time of the inspection, the EPA observed that no plastic sheeting or other disposable impermeable material was covering the ground to collect falling paint debris during the renovation.
22. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and section 409 of TSCA, 15 U.S.C. § 2689.

### Count 4

23. Firms performing renovations on target housing are required to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area, pursuant to 40 C.F.R. § 745.85(a)(4)(i).
24. At the time of the inspection on April 25, 2018, the EPA observed uncontained waste, including paint chips and debris, outside of the work area.
25. Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area constitutes a violation of 40 C.F.R. § 745.85(a)(4)(i) and section 409 of TSCA, 15 U.S.C. § 2689.

### Count 5

26. Firms performing renovations on target housing are required to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and cover doors used as an entrance to the work area with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris,

pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(A).

27. At the time of the inspection, Respondent had not closed all doors in the work area or covered doors with plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(ii)(A).
28. Respondent's failure to close and cover doors in the work area constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(A) and section 409 of TSCA, 15 U.S.C. § 2689.

#### Count 6

29. The RRP Rule requires that firms performing renovations on target housing post signs clearly defining the work area and warning occupants and other persons to remain outside of the work area, pursuant to 40 C.F.R. § 745.85(a)(1).
30. At the time of the inspection, Respondent had not posted signs defining the work area, in violation of 40 C.F.R. § 745.85(a)(1).
31. Respondent's failure to post signs constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

#### V. SETTLEMENT

32. The Parties agree that settlement of this matter is in the public interest, and the Parties agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
33. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
34. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
35. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of two thousand six hundred dollars (\$2,600) is appropriate to settle this matter.
36. Respondent consents and agrees to pay a civil penalty in the amount of two thousand six hundred dollars (\$2,600) in the manner described below.
37. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days

of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.

38. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

**If sent by regular U.S. mail:**

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

**If sent by any commercial carrier or signed receipt confirmation:**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

**If sent by wire transfer:** Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT Address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: U.S. Environmental Protection Agency

**Automated Clearing House (ACH) for receiving U.S. currency:**

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

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

U.S. Treasury Contact Information:  
REX (Remittance Express): 866-234-5681

**Online debit and credit card payment:**

www.Pay.gov  
Enter "sfo 1.1" in the form search box. Open form and complete required fields.

39. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:
- |  |     |   |
|--|-----|---|
| Britta Copt<br>U.S. EPA Region 8 (8ENF-AT-P)<br>Technical Enforcement Program<br>1595 Wynkoop St.<br>Denver, Colorado 80202-1129 | and | Melissa Haniewicz<br>Regional Hearing Clerk (8RC)<br>U.S. EPA Region 8<br>1595 Wynkoop St.<br>Denver, Colorado 80202-1129 |
|--|-----|---|
40. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
41. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
  - b. Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - c. 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; and
  - d. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
42. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other

federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

## VI. GENERAL PROVISIONS

43. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
44. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the Parties, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
45. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both Parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
46. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.
47. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
  - a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
  - b. Claims based on criminal liability; and,
  - c. Claims based on any other violations of the Act or federal or state law.
48. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
49. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
50. Each party to this action shall bear its own costs and attorney fees, if any.
51. The Parties agree that this Consent Agreement may be signed in any number of



counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement and any signature page may be transmitted electronically (*e.g.*, a PDF file).

52. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
53. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which the Final Order is filed approving this Consent Agreement.
54. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: [weiner.marc@epa.gov](mailto:weiner.marc@epa.gov) (for Complainant), and [raumaldo@hotmail.com](mailto:raumaldo@hotmail.com) (for Respondent).

The foregoing Consent Agreement In the Matter of American Best Roofing & Remodeling LLC is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,**

**Complainant.**

**DAVID COBB**

Digitally signed by DAVID  
COBB  
Date: 2020.10.28 20:41:08  
-06'00'

Date: \_\_\_\_\_ By: \_\_\_\_\_

David Cobb, Supervisor  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance Division

**AMERICAN BEST ROOFING &  
REMODELING LLC,**

**Respondent.**

Date: 10-23-2020

By: \_\_\_\_\_  


Printed Name: RAUMALDO MARTINEZ

Title: OWNER

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **AMERICAN BEST ROOFING & REMODELING LLC**; **DOCKET NO.: TSCA-08-2021-0001** was filed with the Regional Hearing Clerk on November 3, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on November 4, 2020, to:

Respondent

Raumaldo Martinez, Owner  
American Best Roofing & Remodeling LLC  
raumaldo@hotmail.com  
abestroofingconstruction@hotmail.com  
ramauldo6@gmail.com

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

November 4, 2020

MELISSA  
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Melissa Haniewicz  
Regional Hearing Clerk