

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
DAVEY’S MASONRY & CONCRETE, LLC	:	U.S. EPA Docket No. TSCA-03-2022-0063
	:	
8244 OLD MILL ROAD	:	Proceeding under Sections 16(a) and 409 of the
PASADENA, MD 21122	:	Toxic Substances Control Act, 15 U.S.C.
	:	§§ 2615(a) and 2689
Respondent.		

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Davey’s Masonry & Concrete, LLC (“Respondent”) (collectively the “Parties”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act, 15 U.S.C. §§ 2615(a) and 2689, and 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 Toxic Substances Control Act (“TSCA” or the “Act”) authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the Act for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The 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).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, 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 Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order 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 22.18(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. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA by adding *Subchapter IV – Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. EPA's Lead Renovation, Repair, and Painting Program (commonly referred to as the "RRP rule") is set forth and codified at 40 C.F.R. Part 745, Subpart E.
13. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings.
14. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to ensure the effective implementation of TSCA Subchapter IV.
15. Under the RRP rule, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited

- training provider to conduct renovation, remodeling, and/or painting activities in target housing and/or child-occupied facilities or must be employed by an EPA-certified renovation firm.
16. Respondent is a “person” as that term is defined at 40 C.F.R. § 745.83 and is subject to the assessment of civil penalties for the violations alleged herein.
 17. At all times relevant to the violations alleged herein, Respondent was a “firm” as that term is defined at 40 C.F.R. § 745.83.
 18. At all times relevant to the violations alleged herein, Respondent was a “renovator” as that term is defined at 40 C.F.R. § 745.83.
 19. In September 2020, Respondent conducted “renovations,” as that term is defined at 40 C.F.R. § 745.83, at 1270 Riverside Ave., Baltimore, MD 21230.
 20. The residence at 1270 Riverside Ave., Baltimore, MD 21230 was built in 1860 and is therefore “target housing” as that term is defined at 40 C.F.R. § 745.103.
 21. In February 2021, Respondent conducted “renovations,” as that term is defined at 40 C.F.R. § 745.83, at 619 N. Carrollton Ave., Baltimore, MD 21217.
 22. The residence at 619 N. Carrollton Ave., Baltimore, MD 21217 was built in 1920 and is therefore “target housing,” as that term is defined at 40 C.F.R. § 745.103.
 23. In March 2021, Respondent conducted “renovations,” as that term is defined at 40 C.F.R. § 745.83, at 205 S. Exeter St., Baltimore, MD 21202.
 24. The residence at 205 S. Exeter St., Baltimore, MD 21202 was built in 1900 and is therefore “target housing,” as that term is defined at 40 C.F.R. § 745.103.
 25. In April 2021, Respondent conducted “renovations,” as that term is defined at 40 C.F.R. § 745.83, at 238 Albemarle St., Baltimore, MD 21202.
 26. The residence at 238 Albemarle St., Baltimore, MD 21202 was built in 1850 and is therefore “target housing,” as that term is defined at 40 C.F.R. § 745.103.
 27. In May 2021, Respondent conducted “renovations,” as that term is defined at 40 C.F.R. § 745.83, at 1527 Battery Ave., Baltimore, MD 21230.
 28. The residence at 1527 Battery Ave., Baltimore, MD 21230 was built in 1900 and is therefore “target housing,” as that term is defined at 40 C.F.R. § 745.103.
 29. More than twenty (20) square feet of exterior paint was disturbed at each of the properties during each renovation. Thus, the renovations were not “minor repair and maintenance activities” as defined by 40 C.F.R. § 745.83, and fall within the requirements of the RRP Rule.

30. On September 8, 2020, EPA received information alleging that Respondent may have failed to comply with the RRP Rule while performing a renovation at 1270 Riverside Ave., Baltimore, MD 21230.
31. On August 6, 2021, EPA received information alleging the Respondent may have failed to comply with the RRP Rule while performing a renovation at 619 N. Carrollton Ave., Baltimore, MD 21217.
32. On June 19, 2021, EPA received information that Respondent may have failed to comply with the RRP Rule while performing a renovation at 1527 Battery Ave., Baltimore, MD 21230.
33. On August 17, 2021, an EPA Inspector performed a Lead Renovation, Repair, and Painting Rule inspection (“Inspection”) of Respondent’s records. During the Inspection, the EPA inspector collected information regarding renovations for which tips were received, as well as information pertaining to renovations performed by Davey’s Masonry at properties located at 205 S. Exeter St., Baltimore, MD 21202 and 238 Albemarle St., Baltimore, MD 21202.

Count I
Failure to Obtain Firm Certification

34. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
35. The regulation at 40 C.F.R. § 745.89(a) requires that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.” *See also* 40 C.F.R. § 745.81(a)(2)(ii).
36. Respondent conducted renovations at 1527 Battery Ave., Baltimore, MD 21230 in May 2021; 1270 Riverside Ave., Baltimore, MD 21230 in September 2020; 619 N. Carrollton Ave., Baltimore, MD 21217 in February 2021; 205 S. Exeter St., Baltimore, MD 21202 in March 2021; and 238 Albemarle St., Baltimore, MD 21202 in April 2021.
37. According to information reviewed during the Inspection, at the time of the renovations, Respondent had failed to obtain firm certification for the renovations conducted at 1527 Battery Ave., Baltimore, MD 21230; 1270 Riverside Ave., Baltimore, MD 21230; 619 N. Carrollton Ave., Baltimore, MD 21217; 205 S. Exeter St., Baltimore, MD 21202; and 238 Albemarle St., Baltimore, MD 21202.
38. Respondent violated 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii) by failing to apply for and obtain firm certification from EPA prior to conducting renovations at 1527 Battery Ave., Baltimore, MD 21230; 1270 Riverside Ave., Baltimore, MD 21230; 619 N. Carrollton Ave., Baltimore, MD 21217; 205 S. Exeter St., Baltimore, MD 21202; and 238 Albemarle St., Baltimore, MD 21202.

39. Respondent's failure to comply with 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii) constitutes a violation of 40 C.F.R § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689; therefore, Respondent is subject to the assessment of penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Counts II-VI

Failure to Assign Certified Renovators to Five Renovations

40. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
41. The regulation at 40 C.F.R. § 745.81(a)(3) requires that "all renovation must be directed by renovators certified in accordance with 40 C.F.R. § 745.90(a) and performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2) in target housing or child-occupied facilities."
42. The regulation at 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure that "a certified renovator is assigned to each renovation performed by the firm."
43. The regulation at 40 C.F.R. § 745.90(a)(4) requires that "to maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under 40 C.F.R. § 745.225." 40 C.F.R. § 745.90(a)(4) further requires the refresher course to be complete "within 5 years of the date the individual completed the initial course."
44. During the renovations conducted in September 2020, February 2021, March 2021, April 2021, and May 2021, Respondent's renovator failed to maintain certification under 40 C.F.R. § 745.90(a)(4) before directing renovations, as required by 40 C.F.R. § 745.81(a)(3). Respondent, therefore, failed to assign a certified renovator to each renovation, in violation of 40 C.F.R. § 745.89(d)(2).
45. Respondent's failure to assign renovators certified under 40 C.F.R. § 745.90(a)(4) to these five renovations, as required by 40 C.F.R. § 745.89(d)(2), constitutes five violations of 40 C.F.R § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689 and Respondent is subject to the assessment of penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Counts VII-XI

Failure to Distribute *Renovate Right* Pamphlet to Adult Occupants of Five Target Housings

46. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
47. 40 C.F.R. § 745.83 defines "pamphlet" as: "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.”

48. 40 C.F.R. § 745.84(a)(1) requires a firm beginning renovation activities at a property to provide an adult occupant of the unit with the pamphlet, and no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, to obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet, certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant, or obtain a certificate of mailing at least 7 days prior to the renovation.
49. Prior to the renovations conducted in September 2020, February 2021, March 2021, April 2021, and May 2021, Respondent violated 40 C.F.R. § 745.84(a)(1) by failing to provide an adult occupant a *Renovate Right* pamphlet at each property.
50. Respondent’s failure to comply with 40 C.F.R. § 745.84(a)(1) for these five renovations constitutes five violations of 40 C.F.R § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689; therefore, Respondent is subject to the assessment of penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Counts XII-XVI

Failure to Provide Documentation of Compliance with 40 C.F.R. § 745.85 for Five Renovations

51. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
52. 40 C.F.R. § 745.86(a) and (b) require firms performing renovations to retain and, if requested, make available to EPA “all records necessary to demonstrate compliance with [40 C.F.R § 745.86] for a period of 3 years following completion of the renovation.” 40 C.F.R § 745.86 requires records that demonstrate the renovator performed all of the lead-safe work practices described in 40 C.F.R. § 745.85(a) as well as post-renovation cleaning procedures described in 40 C.F.R. § 745.85(b).
53. At the time of the Inspection, Respondent violated 40 C.F.R. § 745.86(a) by failing to make available to EPA the required documentation under 40 C.F.R. § 745.86(b) for the renovations conducted at 1527 Battery Ave., Baltimore, MD 21230; 1270 Riverside Ave., Baltimore, MD 21230; 619 N. Carrollton Ave., Baltimore, MD 21217; 205 S. Exeter St., Baltimore, MD 21202; and 238 Albemarle St., Baltimore, MD 21202.
54. Respondent’s failures to comply with 40 C.F.R. § 745.86(a) for these five renovations constitutes five violations of 40 C.F.R § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689; therefore, Respondent is subject to the assessment of penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count XVII
Failure to Contain Waste from Renovation Activities

55. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
56. 40 C.F.R. § 745.85(a)(4)(i) requires that “waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.”
57. Photos taken by the Maryland Department of the Environment from the renovation performed at 619 N. Carrollton Ave., Baltimore, MD 21217 in February 2021 show painted brick dust on the curb and in the street adjacent to the property.
58. Respondent’s failure to comply with 40 C.F.R. § 745.85(a)(4)(i) constitutes a violation of 40 C.F.R § 745.87(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689; therefore, Respondent is subject to the assessment of penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

CIVIL PENALTY

59. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWO THOUSAND EIGHT HUNDRED dollars (\$2,800), which Respondent shall be liable to pay in accordance with the terms set forth below.
60. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in TSCA Section 16(a)(2)(B), including, the following: the nature, circumstances, extent, and gravity of the violation or violations 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 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* which reflects the statutory penalty criteria and factors set forth at TSCA Section 16(a)(2)(B), *EPA’s Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses*, 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.
61. Payment of the civil penalty amount, and any associated interest, administrative fees, 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 to Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2022-0063;
- b. All checks shall be made payable to the "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 by email to:

Conner Kingsley
Assistant Regional Counsel
kingsley.conner@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

- 62. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 63. 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 Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order 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).

64. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).
65. 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.
66. 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).
67. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
68. The parties consent to service of the Final Order by e-mail at the following valid email addresses: kingsley.conner@epa.gov (for Complainant), and [REDACTED] (for Respondent).

GENERAL SETTLEMENT CONDITIONS

69. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
70. 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 Consent Agreement and Final Order, 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.

71. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

72. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the TSCA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

73. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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 Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

74. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

EFFECTIVE DATE

75. The effective date of this Consent Agreement and Final Order 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

76. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

For Respondent: DAVEY'S MASONRY & CONCRETE, LLC

Date: 3-8-22

By: 

Davey's Masonry & Concrete, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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.

By: **KAREN MELVIN** Digitally signed by KAREN MELVIN
Date: 2022.03.24 12:41:35 -04'00'

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

Attorney for Complainant:

By: **CONNER KINGSLEY** Digitally signed by CONNER KINGSLEY
Date: 2022.03.09 14:19:05 -05'00'

Conner Kingsley
Assistant Regional Counsel
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of: :

DAVEY’S MASONRY & CONCRETE, : U.S. EPA Docket No. TSCA-03-2022-0063
LLC :
8244 OLD MILL ROAD : Proceeding under Sections 16(a) and 409 of
PASADENA, MD 21122 : the Toxic Substances Control Act, 15 U.S.C.
: §§ 2615(a) and 2689

Respondent.

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Davey’s Masonry & Concrete, LLC 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, Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, 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* (August 2010), which reflects the statutory penalty criteria and factors set forth at TSCA Section 16(a)(2)(B), *EPA’s Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* (September 20, 2019), and the statutory factors set forth in *Section 16(a)(2)(B) of the Toxic Substances Control Act*, 15 U.S.C. § 2615(a)(2)(B).

NOW, THEREFORE, PURSUANT TO Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount ***TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800.00)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c) and comply with the terms and conditions of the 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 the Toxic Substances Control Act and the regulations promulgated thereunder.

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

By: **JOSEPH LISA** Digitally signed by JOSEPH LISA
Date: 2022.03.29 08:42:49 -04'00'

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

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

In the Matter of: :
 :
 :
 DAVEY’S MASONRY & : U.S. EPA Docket No. TSCA-03-2022-0063
 CONCRETE, LLC :
 :
 8244 OLD MILL ROAD : Proceeding under Sections 16(a) and 409 of the
 PASADENA, MD 21122 : Toxic Substances Control Act, 15 U.S.C. §§
 : 2615(a) and 2689

 Respondent.

CERTIFICATE OF SERVICE

I certify that on 3/29/22, the foregoing *Consent Agreement and Final Order*, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Bradley Davey, Owner
Davey’s Masonry & Concrete, LLC
8244 Old Mill Road
Pasadena, MD 21122
[REDACTED]

Copies served via email to:

Conner Kingsley
Assistant Regional Counsel
U.S. EPA, Region III
kingsley.conner@epa.gov

Craig Yussen
Chemical Engineer
U.S. EPA, Region III
yussen.craig@epa.gov

Date: 3/29/22

BEVIN
ESPOSITO

Digitally signed by BEVIN
ESPOSITO
Date: 2022.03.29 09:14:01
-04'00'

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

TRACKING NUMBER(S): _____