



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2018 SEP 27 AM 11:47

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2018-0006

IN THE MATTER OF:

ABBOTTS FIRE & FLOOD

FINAL ORDER

RESPONDENT

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 27<sup>th</sup> DAY OF September, 2018.

  
\_\_\_\_\_  
Katherin E. Hall  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Docket No. TSCA-08-2018-0006

FILED  
EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_  
IN THE MATTER OF: )

Abbotts Fire & Flood )  
2301 S. Jason Street )  
Denver, Colorado 80223 )

Respondent. )  
\_\_\_\_\_ )

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, Abbotts Fire & Flood (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, 2689, and the regulations promulgated under TSCA Subchapter IV, as 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 6 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 \$38,892 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, 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. In November 2017, EPA initiated an investigation of Respondent’s compliance with the RRP Rule, including a visit to Respondent’s jobsite located at 2743 N. Gaylord Street in Denver, Colorado on November 7, 2017.
12. Based on information available to the EPA, from November 1–3, 2017, Respondent scraped paint from exterior surfaces at the residential property located at 2743 N. Gaylord Street in Denver, Colorado.
13. Based on the records provided to the EPA by Respondent, the scope of the project included sanding and scraping surfaces containing lead-based paint.
14. Respondent performed a “renovation,” as that term is defined in 40 C.F.R. § 745.83, at the 2743 N. Gaylord Street property.
15. The residential property at 2743 N. Gaylord Street was constructed prior to 1978 and is “target housing” as that term is defined in 15 U.S.C. § 2681(17).
16. At the time of the renovation, the occupants of the residential property at 2743 N. Gaylord Street included a pregnant woman and a child under the age of six.
17. On December 18, 2017, authorized representatives of the EPA conducted an inspection of Respondent’s records to determine compliance with the RRP Rule for projects at other residential properties constructed prior to 1978.
18. Based on available records, Respondent performed the following projects:
  - a. Respondent performed a project that involved scraping paint on or around June 21, 2017, at a residential property located at 600 Jackson Street in Denver, Colorado;
  - b. Respondent performed a project that involved removing drywall on or around November 1, 2017, at a residential property located at 630 Leyden Street in Denver, Colorado.

19. The residential properties at 600 Jackson Street and 630 Leyden Street were constructed prior to 1978 and are “target housing” as that term is defined in 15 U.S.C. § 2681(17).
20. Based on the records provided to the EPA by Respondent, the residential properties at 600 Jackson Street and 630 Leyden Street tested positive for the presence of lead-based paint.
21. Respondent performed “renovations,” as that term is defined in 40 C.F.R. § 745.83, at the 600 Jackson Street and 630 Leyden Street properties.

#### Count 1

22. Firms performing renovations on target housing are required, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending ten (10) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C).
23. During the renovation at the 2743 N. Gaylord Street property, Respondent failed to cover the ground with plastic sheeting a sufficient distance beyond the perimeter of the surfaces undergoing renovation to collect falling paint debris.
24. Respondent’s failure to cover the ground sufficiently 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 2

25. Firms performing renovations on target housing are required, at the conclusion of each work day and at the conclusion of the renovation, to store waste that has been collected from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. § 745.85(a)(4)(ii).
26. At the conclusion of each work day and the conclusion of the renovation at the 2743 N. Gaylord Street property, Respondent failed to store waste collected from renovation activities, including paint chips resulting from scraping activities, under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.
27. Respondent’s failure to properly store waste constitutes a violation of 40 C.F.R. § 745.85(a)(4)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

#### Counts 3 and 4

28. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovation, pursuant to 40 C.F.R. § 745.86(a).
29. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a



certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) for the renovation. 40 C.F.R. § 745.86(b)(6).

30. Respondent failed to retain documentation that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) at the 600 Jackson Street and 630 Leyden Street jobsites.
31. Respondent's failure to retain documentation that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) for the 600 Jackson Street and 630 Leyden Street jobsites constitutes two violations of 40 C.F.R. § 745.86(b)(6) and sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

#### Counts 5 and 6

32. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovation, pursuant to 40 C.F.R. § 745.86(a).
33. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation. 40 C.F.R. § 745.86(b)(6).
34. Respondent failed to retain documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovations at the 600 Jackson Street and 630 Leyden Street jobsites.
35. Respondents' failure to retain documentation that a certified renovator performed the post-renovation cleaning verification at the 600 Jackson Street and 630 Leyden Street jobsites constitutes two violations of 40 C.F.R. § 745.86(b)(6) and sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

#### V. SETTLEMENT

36. 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.
37. 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.
38. 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.

39. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of thirty-six thousand dollars (\$36,000) is appropriate to settle this matter.
40. Respondent consents and agrees to pay a civil penalty in the amount of thirty-six thousand dollars (\$36,000) in the manner described below.
- a. Payment shall be made in twelve (12) monthly installments. The first installment is due no later than thirty (30) calendar days from the effective date of this Consent Agreement, pursuant to Paragraph 52. Each subsequent installment is due no later than the fourth (4th) day of each month, beginning the calendar month following payment of the first installment.
  - b. Interest shall be assessed at the U.S. Treasury's Current Value of Funds Rate. Including interest, the first eleven (11) monthly installments shall be in the amount of \$3,016.51. The twelfth (12th) installment shall be in the amount of \$2,985.65.
  - c. If at any time Respondent makes an early payment or payment in addition to the monthly installment above, Respondent shall request revised installment amounts from the EPA after making such a payment.
41. In the event of Respondent's failure to make any payment of a civil penalty when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest, penalties, or handling charges then unpaid immediately due and payable.
42. 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](http://www.Pay.gov)  
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

43. 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:

Kristin Jendrek  
U.S. EPA Region 8 (8ENF-AT-TP)  
Technical Enforcement Program  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

and

Melissa Haniewicz  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

44. In the event any payment is not received by the specified due date, interest accrues from thirty (30) days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
45. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31<sup>st</sup>) day from the due date of any payment, and for each subsequent thirty (30) day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

46. 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.

## VII. GENERAL PROVISIONS

47. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
48. 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.
49. 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.
50. 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.
51. 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.
52. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
53. 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.
54. 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.
55. Each party to this action shall bear its own costs and attorney fees, if any.



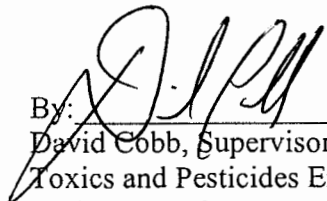
56. The Parties agree that this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one 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).
57. 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.
58. 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.

The foregoing Consent Agreement In the Matter of Abbotts Fire & Flood is hereby stipulated, agreed, and approved for entry.

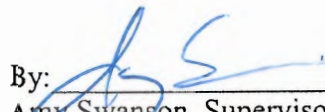
**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 8,**

**Complainant.**

Date: 9/26/18

By:   
 David Cobb, Supervisor  
 Toxics and Pesticides Enforcement Unit  
 Technical Enforcement Program  
 Office of Enforcement, Compliance and  
 Environmental Justice (8ENF-AT-TP)  
 U.S. Environmental Protection Agency,  
 Region 8

Date: 9.26.2018

By:   
 Amy Swanson, Supervisory Attorney  
 Legal Enforcement Program  
 Office of Enforcement, Compliance and  
 Environmental Justice (8ENF-L)  
 U.S. Environmental Protection Agency,  
 Region 8

The foregoing Consent Agreement In the Matter of Abbotts Fire & Flood is hereby stipulated, agreed, and approved for entry.

**Abbotts Fire and Flood,**

**Respondent.**

Date: 9/26/18

By: 

Printed Name: Travis Chmura

Title: President

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **ABBOTTS FIRE & FLOOD; DOCKET NO.: TSCA-08-2018-0006** was filed with the Regional Hearing Clerk on September 27, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 27, 2018, to:


Respondent

Marissa Cole  
Abbotts Fire & Flood  
2301 S. Jason Street  
Denver, Colorado 80223

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

September 27, 2018



Melissa Haniewicz  
Regional Hearing Clerk