

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN RE:)	
)	DOCKET NO. TSCA-03-2017-0179
Justin Bird d/b/a)	
Bird's Eye View Construction)	
388 Monocacy Drive)	
Bath, PA 18014)	CONSENT AGREEMENT
)	
Respondent,)	
)	
120 Porter Street, Apartment A)	Proceeding under Section 16(a) of
Easton, PA 18042)	the Toxic Substances Control Act,
)	15 U.S.C. § 2615(a)
)	
Target Housing.)	

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 REGIONAL OFFICE
 ENVIRONMENTAL PROTECTION AGENCY
 PHILADELPHIA, PA 19104

CONSENT AGREEMENT

I. INTRODUCTION

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, Region III (“Complainant”), of the U.S. Environmental Protection Agency (“EPA”) and Justin Bird d/b/a Bird’s Eye View Construction (“Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act, as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (collectively, “TSCA”), 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.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, the filing of this CA will simultaneously commence and resolve EPA’s civil claims for Respondent’s violations alleged herein of regulations promulgated pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, codified at 40 C.F.R. Part 745, Subpart E - Residential Property Renovation (“RRP Rule”).

II. GENERAL PROVISIONS

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CA and the attached Final Order (“FO”), hereinafter collectively referred to as the “CAFO.”

4. Except as provided in paragraph 3 herein Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CA.

5. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this CA, the issuance of the attached Final Order, and the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
8. Each party to this CA shall bear its own costs and attorney's fees.
9. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 16 of TSCA, 40 C.F.R. 15 U.S.C. § 2615, and 40 C.F.R. §§ 22.1(a)(5), 22.4 and 745.87.
10. In accordance with 40 C.F.R. § 22.13(b) and .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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count 1 (Firm Certification)

11. 40 C.F.R. § 745.82(a) provides that the requirements of 40 C.F.R. 745 Subchapter E apply to all renovations performed for compensation in target housing, with certain exceptions inapplicable hereto.
12. 40 C.F.R. § 745.83 defines "person" as any natural or judicial person including, *inter alia*, any individual, corporation, partnership, or association.
13. 40 C.F.R. § 745.83 defines "firm" as, *inter alia*, a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.
14. 40 C.F.R. § 745.83 defines "renovation" as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, with certain exceptions inapplicable hereto.
15. Respondent is a sole proprietor and an individual doing business in the Commonwealth of Pennsylvania with a principle place of business located at 388 Monocacy Drive, Bath, Pennsylvania, 18014.
16. At all times relevant to the violations alleged herein, Respondent is and was an "individual doing business" and a "person" that performed "renovations" within the meaning of

40 C.F.R. § 745.83 at a residential property located at 20 Porter Street, Apartment A, Easton, PA 18042, during June and July 2015.

17. On or about June 27, 2014, Respondent submitted a proposal to the owner of the property located at 120 Porter Street, Apartment A, Easton, PA 18042, offering to perform a “renovation for compensation” at such property (“Easton Property”).

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

19. At all times relevant to the violations alleged herein, the residential building located at the Easton Property was built prior to 1978 and were not housing for the elderly or persons with disabilities or any 0-bedroom dwelling and, therefore, was “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

20. At all times relevant to the violations alleged herein, at least one “residential dwelling” within the meaning of Section 401(14) of TSCA, 15 U.S.C. § 2681(14), was located at the Easton Property.

21. During June and July 2015, Respondent performed a “renovation” within the meaning of 40 C.F.R. § 745.83 at a residential dwelling located at the Easton Property.

22. The renovation at the Easton Property was a “renovation performed for compensation at target housing” within the meaning of 40 C.F.R. § 745.82.

23. On October 1, 2015, a duly authorized representative of EPA conducted an inspection to determine Respondent’s compliance with 40 C.F.R. 745 Part E in connection with the renovation at the Easton Property.

24. 40 C.F.R. § 745.81(a)(2)(ii) provides that “[o]n or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under [40 C.F.R.] § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. 745.82(a) or (c) [sic].”

25. On or about May 15, 2016, Respondent applied for and received its initial lead-safe firm certification from EPA.

26. During June and July 2015, Respondent offered to and/or performed a renovation at the Easton Property without first obtaining certification from EPA under 40 C.F.R. § 745.89 as required by 40 C.F.R. § 745.81(a)(2)(ii).

27. Respondent's acts or omissions described in paragraph 26 herein constitute a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 2 (Information Distribution)

28. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

29. 40 C.F.R. § 745.84(a)(1) provides that no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing the firm performing such renovation must provide the owner of the unit with the EPA pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*," and obtain either a written acknowledgement from such owner that the owner has received such pamphlet or obtain a certificate of mailing of such pamphlet at least seven (7) days prior to the renovation.

30. Respondent failed to obtain either the written acknowledgement from the owner of the Easton Property or the certificate of mailing as described as in paragraph 29 herein as required by 40 C.F.R. § 745.84(a)(1).

31. Respondent's acts or omissions described in paragraph 30 herein constitute a violation of 40 C.F.R. § 745.84(a)(1)(i) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 3 (Warning Signs)

32. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

33. 40 C.F.R. § 745.85(a)(1) requires that firms performing a renovation post signs that clearly define the work area and that warn occupants and other persons not involved in the renovation activities to remain outside of the work area.

34. Respondent failed to post warning signs at the renovation of the Easton Target Housing as required by 40 C.F.R. § 745.85(a)(1).

35. Respondent's acts or omissions described in paragraph 34 herein constitute a violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 4 (Work Practice of Containment)

36. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

37. 40 C.F.R. § 745.85(a)(2)(i)(D) requires that firms cover the floor surface with plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.
38. Respondent failed to cover the floor surface with plastic sheeting or other impermeable material in the work area undergoing renovation at the Easton Property as required by 40 C.F.R. § 745.85(a)(2)(i)(D).
39. Respondent's acts or omissions described in paragraph 38 herein constitute a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 5 (Record Retention)

40. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
41. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745, including, where applicable, records described in 40 C.F.R. § 745.86(b) (1)-(6), for a period of three years following completion of such renovations.
42. Respondent failed to retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the renovation of the Easton Property as required by 40 C.F.R. § 745.86(a).
43. Respondent's acts or omissions described in paragraph 44 herein constitute a violation of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

IV. CIVIL PENALTY

44. In settlement of EPA's claims for civil monetary penalties for the violations of TSCA alleged herein Respondent consents to the assessment of a civil penalty in the amount of **Five Thousand Five Hundred and Thirty Dollars (\$5,530.00)**, which Respondent shall pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
45. The aforesaid settlement amount is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors of Section 16(a)(2)(B) of

TSCA, 15 U.S.C. § 2615(a)(2)(B) (the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, 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), EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (revised April 2013), the May 2012 *Pilot RRP Penalty Program for Micro-Businesses*, and the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19.

46. Respondent shall remit payment of the civil penalty described in paragraph 44 herein and any interest, administrative fees and late payment penalties identified in paragraphs 47, 48, and 49 herein as follows:

- a. By mailing (*via first class U.S. Postal Service mail*) a certified check or cashier's check payable to the "United States Treasury" to:

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

Contacts: Craig Steffen 513-487-2091
Heather Russell 513-487-2044

- b. By overnight delivery of a certified check or cashier's check payable to the "United States Treasury" to:

U.S. Environmental Protection Agency
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contacts: Craig Steffen 513-487-2091
Heather Russell 513-487-2044

- c. By delivery of a certified check or cashier's check payable to the "United States Treasury" in any currency drawn on a bank with no USA branches to:

Cincinnati Finance
US EPA, MS-NWD

26 W ML King Drive
Cincinnati, OH 45268-0001

- d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA: 021030004
Account No: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- e. By automated clearinghouse ("ACH") to the following account:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 -checking

- f. Online at: WWW.PAY.GOV/paygov/
Search for SFO 1.1 (for correct form).

- g. Additional payment penalty guidance is available at:

<https://www.epa.gov/financial/makepayment>

- h. All payments by Respondent shall reference the name and address of Respondent Bird's Eye View Construction and the EPA Docket Number of this CAFO (TSCA-03-2017-0179). At the same time that any payment is made, Respondent shall send a copy of each check or written confirmation of each EFT, ACH or online payment to:

Janet E. Sharke
Senior Asst. Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

47. 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 or to comply with the conditions in this CA and the attached FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

48. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash 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.

49. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which 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).

50. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CA and the accompanying FO.

V. FULL AND FINAL SATISFACTION

51. This CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 16 of TSCA, 15 U.S.C. § 2615, for the specific violations alleged herein.

VI. OTHER APPLICABLE LAWS

52. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. RESERVATION OF RIGHTS

53. 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. In addition, 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). Further,

EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. CERTIFICATION OF COMPLIANCE

54. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with applicable provisions of TSCA and 40 C.F.R. Part 745.

IX. PARTIES BOUND

55. This CA and the accompanying FO shall apply to and be binding upon EPA, Respondent and Respondent's successors, agents and assigns.

X. EFFECTIVE DATE

56. The effective date of this CA and the accompanying FO (after signature by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer) is the date on which such CAFO is filed with the Regional Hearing Clerk.

XI. ENTIRE AGREEMENT

57. This CA and the accompanying FO constitute the entire agreement and understanding of the Parties regarding settlement of all claims 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 CAFO.

XII. EXECUTION

58. The person signing this CA on behalf of Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this CA and to legally bind Respondent to the terms and conditions of this CA and the accompanying FO.

For Respondent:

Date: 9/6/17

By: 

Justin Bird d/b/a Bird's Eye View Construction

For Complainant:

Date: 9/11/2017 By: 

Janet E. Sharke
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Acting Director, Land and Chemicals Division, U.S. EPA, Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 9-20-2017 By: 

Martha Shimkin, Acting Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

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Justin Bird d/b/a)	
Bird's Eye View Construction)	
388 Monocacy Drive)	
Bath, PA 18014)	FINAL ORDER
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120 Porter Street, Apartment A)	Proceeding under Section 16(a) of
Easton, PA 18042)	the Toxic Substances Control Act,
)	15 U.S.C. § 2615(a)
Target Housing.)	

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Justin Bird d/b/a Bird's Eye View Construction, 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 (with specific reference to Sections 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 August 2010 Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (revised April 2013), and the statutory factors set forth in Section 16(a)(2)(B) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a)(2)(B).

NOW, THEREFORE, PURSUANT TO Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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 of **Five Thousand Five Hundred and Thirty Dollars (\$5,530.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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.

Sept. 20, 2017
Date



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