



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

September 26, 2012

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL**

**Receipt No. 7009 1680 0000 7668 0714**

Mr. Michael Adler  
President/Owner  
Hometown Painting, Inc.  
29W585 Batavia Road, Suite 3  
Warrenville, Illinois 60555

Consent Agreement and Final Order In the Matter of  
Hometown Painting, Inc. Docket No. **TSCA-05-2012-0024**

Dear Mr. Adler:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 26, 2012 with the Regional Hearing Clerk.

In accordance with paragraph 57 of the CAFO, Complainant has determined that Respondent has the ability to pay \$0 as a civil penalty for the violations alleged in this CAFO. Therefore there is no assessed civil penalty.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morris".

Julie Morris  
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)  
Kasey Barton, Counsel for Complainant/C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2012-0024</b>
	)	
<b>Hometown Painting, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Warrenville, Illinois</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
	)	
<b>Respondent.</b>	)	
<hr/>		

**RECEIVED**  
SEP 26 2012

**Consent Agreement and Final Order**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Hometown Painting, Inc., a corporation with a place of business located at 29 W 585 Batavia Road Suite 3, Warrenville, Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550, amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), requires EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified;

and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

13. Section 406(b) of TSCA, 15 U.S.C. § 2687(b), requires EPA to promulgate regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

14. Pursuant to 402(a) of TSCA, 15 U.S.C. § 2682(a), EPA promulgated regulations at 40 C.F.R. Part 745, titled lead-based paint poisoning prevention in certain residential structures, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individual and firms engaged in lead-based paint activities, and work practice standards for performing such activities. *See* 61 Fed. Reg. 45778 (August 29, 1996).

15. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations at 40 C.F.R. Part 745 Subpart E, titled residential property renovation, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

16. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), EPA promulgated regulations at 40 C.F.R. Part 745 Subpart E, requiring certain persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. *See* 63 Fed. Reg. 29919 (June 1, 1998).

17. Under 40 C.F.R. § 745.81(a), each firm that performs for compensation a renovation of target housing or a child occupied facility must be certified by EPA and by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child occupied facilities, and must comply with the specified work practice and recordkeeping requirements at 40 C.F.R. §§ 745.85-86 by April 22, 2010. EPA stated that it would not take enforcement action for violations of the firm certification requirement until October 1, 2010. *See* Memorandum from Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, dated June 18, 2010.

18. 40 C.F.R. § 745.83 defines “firm” to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

19. 40 C.F.R. § 745.83 defines “pamphlet” to mean 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.

20. 40 C.F.R. § 745.83 defines “renovation” to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes (but is not limited to): the removal, modification or repair of painted

surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

21. 40 C.F.R. § 745.83 defines “renovator” to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

22. 40 C.F.R. § 745.103 defines “target housing” to mean 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 zero-bedroom dwelling.

23. 40 C.F.R. § 745.103 defines “residential dwelling” to mean a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

24. 40 C.F.R. § 745.89 provides that firms that perform renovations for compensation in target housing and child-occupied facilities must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. §§ 745.85(a) and 745.82(a).

25. 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 the renovation must provide the owner of the unit with the pamphlet and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.

26. 40 C.F.R. § 745.89(d)(1) provides that firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

27. 40 C.F.R. § 785.85(a)(5) provides that after the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

28. 40 C.F.R. § 785.85(a)(5)(i)(A) provides that after the renovation has been completed, the firm must collect all paint chips and debris and, without dispersing any of it, seal the material in a heavy-duty bag.

29. 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 the residential property renovation requirements at 40 C.F.R. Part 745 Subpart E for a period of three years following completion of the renovation. This includes documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

30. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, and may subject the violator to administrative civil penalties under Section 16(a) of

TSCA, 15 U.S.C. § 2615(a).

31. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

### **General Allegations**

32. Respondent conducts interior and exterior painting, renovation, remodeling, and repair work on buildings.

33. On August 26, 2010, EPA received a complaint regarding Respondent's compliance with Sections 402 and 406(b) of TSCA in connection with painting activities conducted by Respondent on a house located at 311 South Van Buren Street, Batavia, Illinois 60510.

34. On September 28, 2010, EPA issued a request for information to Respondent, seeking information about Respondent's compliance with Sections 402 and 406(b) of TSCA. EPA requested, among other things, a copy of Respondent's renovator certification showing completion of an EPA accredited training course and a copy of Respondent's certification received by EPA. Additionally, for all renovations conducted by Respondent after April 22, 2010, EPA requested copies of all contracts and/or agreements for such renovations and copies of all acknowledgements of receipt of the pamphlet by the owners and occupants of residential housing where such renovations were conducted.

35. Respondent did not provide a response to EPA's request for information.



36. Based on information provided in connection with the August 26, 2010 complaint, Respondent entered into the following written work agreement (contract) with individuals for exterior home painting activities on a house (property) as follows:

Address of Property	Contracted Work	Date of Contract	Dates That Work Was Performed
311 South Van Buren Street Batavia, IL 60510	Powerwash house completely, and scrape, sand, and caulk as needed. Paint complete house including fascia, all window wood frames around house, basement windows, bottom freezeboards, side entrance ceiling, cornerboards, front door and frame, soffits, decorative beams, and all siding around house.	May 7, 2010	May 17, 2010 through May 21, 2010

37. By check dated May 22, 2010, Respondent was paid \$2,698.00 by the owners of the property for the work performed in paragraph 36, above.

38. Respondent is a corporation, and is therefore a “firm” as defined in 40 C.F.R. § 745.83.

39. The property was constructed before 1970, and is therefore “target housing” as defined in 40 C.F.R. § 745.103.

40. The property is a single-family dwelling, including attached structures such as porches and stoops and is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons and is therefore a “residential dwelling,” as defined in 40 C.F.R. § 745.103.

41. The work Respondent conducted at 311 South Van Buren Street from May 17, 2010 through May 21, 2010, described in paragraph 36, above, involved modifications of the building's existing structure or portions thereof that resulted in the disturbance of painted surfaces and, therefore, is a "renovation" as defined in 40 C.F.R. § 745.83.

42. A child under the age of 6 resides in the residential dwelling unit identified in paragraph 36, above.

43. Every employee of Respondent who performs or directs workers to perform renovations is a "renovator," as defined in 40 C.F.R. § 745.83.

44. By receiving payment for the renovation conducted in paragraph 36, above, Respondent performed a renovation for compensation within the meaning of 40 C.F.R. § 745.89.

#### **Count 1**

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as if set forth in this paragraph.

46. Respondent did not provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner a written acknowledgement that the owner had received the pamphlet or a certificate of mailing at least 7 days prior to conducting the renovation described in paragraph 36, above, as required by 40 C.F.R. § 745.84(a)(1).

47. Respondent's failure to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner a written acknowledgement that the owner had received the pamphlet or a certificate of mailing at least 7 days prior to the renovation referred to in paragraph 36, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

### **Count 2**

48. Complainant incorporates paragraphs 1 through 44 of this Complaint as if set forth in this paragraph.

49. After the renovation described in paragraph 36, above, was completed, Respondent did not clean the work area until no dust, debris or residue remained, as required by 40 C.F.R. § 745.89(a)(5).

50. Respondent's failure to clean the work area until no dust, debris or residue remains after completing the renovation described in paragraph 36, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

### **Count 3**

51. Complainant incorporates paragraphs 1 through 44 of this Complaint as if set forth in this paragraph.

52. After completing the renovation described in paragraph 36, above, Respondent did not collect all paint chips and debris and seal the material in a heavy-duty bag, as required by 40 C.F.R. § 745.85(a)(5)(i)(A).

53. Respondent's failure to collect all paint chips and debris and seal the material in a heavy-duty bag after completing the renovation described in paragraph 36, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

### **Count 4**

54. Complainant incorporates paragraphs 1 through 44 of this Complaint as if set forth in this paragraph.

55. After completing the renovation described in paragraph 36, above, Respondent did not retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, as required by 40 C.F.R. § 745.86(a).

56. Respondent's failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E following completion of the renovation described in paragraph 36, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Civil Penalty**

57. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant has determined that Respondent has the ability to pay \$0 as a civil penalty for the violations alleged in this CAFO. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation or violations alleged 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 factors as justice may require. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

#### **General Provisions**

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

59. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

60. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, and other applicable federal, state, and local laws.

61. Respondent certifies that it is complying with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing regulations at 40 C.F.R. Part 745.

62. Respondent agrees to apply and obtain certification from EPA pursuant to 40 C.F.R. § 745.89 before performing any renovations for compensation on target housing and child-occupied facilities.

63. Respondent agrees to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90 before performing any renovations for compensation on target housing and child-occupied facilities.

64. The terms of this CAFO bind Respondent, and its successors and assigns.

65. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorneys fees in this action.

67. This CAFO constitutes the entire agreement between the parties.

**Hometown Painting, Inc., Respondent**

9/7/12  
Date

Michael Adler  
Michael Adler  
President/Owner

**United States Environmental Protection Agency, Complainant**

September 21, 2012  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Hometown Painting, Inc.**  
**Docket No. TSCA-05-2012-0024**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-24-12

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Hometown Painting, Inc., was filed on September 26, 2012 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9689, a copy of the original to the Respondent:

Mr. Michael Adler  
President/Owner  
Hometown Painting, Inc.  
29W585 Batavia Road, Suite 3  
Warrenville, Illinois 60555

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Kasey Barton, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
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Docket No. **TSCA-05-2012-0024**

