

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

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 EPA REGION III, PHILA. PA

In the Matter of:)
)
 Elk Custom Homes Contracting, Inc.)
 226 Laurel Estates)
 Kersey, PA 15846)
)
 RESPONDENT)
)
)
)
)

Docket No.: TSCA-03-2015-0133

Proceeding Under Section 16(a) of the
 Toxic Substances Control Act, 15 U.S.C.
 Section 2615(a)

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Elk Custom Homes Contracting, Inc. (or “Respondent”) pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“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 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure, during the performance of a renovation for compensation on certain pre-1978 housing, to comply with the Lead Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth at 40 C.F.R. Part 745, Subpart.
2. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Section IV (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. 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 CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.
11. Pursuant to 40 C.F.R. § 745.83, the term “firm” means “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.”
12. Pursuant to 40 C.F.R. § 745.83, the term “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 by 40 C.F.R. § 745.223.”

13. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “any housing constructed prior to 1978, except 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 0-bedroom dwelling.”
14. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “firm,” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83 at the property located at 418 Elk Avenue, Johnsonburg, PA 15845 (“418 Elk Avenue”).
15. 418 Elk Avenue, referred to above, was constructed prior to 1978 and is “target housing” as that term is defined at 40 C.F.R. § 745.103.
16. Respondent entered into a contract on or around June 19, 2012 with the owner of 418 Elk Avenue, for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. § 745.82(a) at 418 Elk Avenue.
17. The “renovation performed for compensation” at 418 Elk Avenue did not involve a renovation in target housing or a child-occupied facility in which:
 - (1) “a written determination ha[d] been made by an inspector or risk assessor ... that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) “a certified renovator, using an EPA recognized test kit . . ., has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(2); or
 - (3) “a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(3).
18. On November 15, 2012, Complainant conducted an inspection of the Respondent’s business records to further determine Respondent’s level of compliance with the RRP rule in regards to certain renovation activities performed by Respondent in 2012 in Pennsylvania.

V. VIOLATIONS ALLEGED

Count 1

19. The allegations contained in Paragraphs 1 through 18 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

20. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a).
21. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.
22. At the time of the renovations at 418 Elk Avenue, Respondent had not applied to EPA for certification to perform renovations, and did not qualify for an exception identified in 40 C.F.R. § 745.82(a).
23. **Count 1:** Under 40 C.F.R. § 745.81(a)(2)(ii), Respondent's failure to obtain EPA firm certification pursuant to 40 C.F.R. § 745.89 before performing renovations at 418 Elk Avenue 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.

Count 2

24. The allegations contained in Paragraphs 1 through 23 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
25. Pursuant to 40 C.F.R. § 745.89(d)(2), a firm performing a renovation must ensure that a certified renovator is assigned to a renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.
26. At the time of the renovations at 418 Elk Avenue, Respondent had not ensured that a certified renovator was assigned to the renovation performed by the firm, nor had it discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.
27. **Count 2:** Under 40 C.F.R. § 745.89(d)(2), Respondent's failure to ensure that a certified renovator is assigned to a renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, during the renovation of 418 Elk Avenue 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.

Count 3

28. The allegations contained in Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
29. Pursuant to 40 C.F.R. § 745.84(a)(1)(i), a firm performing a renovation must provide the owner of the unit with EPA's *Renovate Right* pamphlet, and either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation.

30. At the time of the November 15, 2012 inspection, Respondent did not have the owner of 418 Elk Avenue's acknowledgment of receipt of the pamphlet or a certificate of mailing sent at least 7 days before the renovation.
31. **Count 3:** Under 40 C.F.R. § 745.84(a)(1)(i), failure to either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation, during the renovation at 418 Elk Avenue referred to in Paragraph 16, constitutes a violation of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 4

32. The allegations contained in Paragraphs 1 through 31 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
33. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart, 40 C.F.R. § 745, Subpart E, for a period of three (3) years following completion of the renovation.
34. Pursuant to 40 C.F.R. §745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
35. At the time of the November 15, 2012 inspection, Respondent had not retained records for the renovation performed at 418 Elk Avenue documenting a certified renovator performed or directed workers to perform the tasks required by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
36. **Count 4:** Under 40 C.F.R. § 745.86, Respondent's failure to retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), during the renovation at 418 Elk Avenue referred to in Paragraph 16, constitutes a violation of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

VI. CIVIL PENALTY

37. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **One Thousand Three Hundred and Forty Dollars (\$1,340.00)** which

Respondent shall be liable to 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 of \$1,340.00 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).

38. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, 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 ("LBP Consolidated ERPP")*, dated August 2010.

39. Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, it is the understanding of the Parties that the Respondent will pay the civil penalty in six (6) monthly installments and will pay interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:

1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$224.43;

2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$224.25;

3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$224.06;

4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$223.88;

5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$223.70; and

6th payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$223.53;

Under this proposed repayment schedule, the Respondent will pay the civil penalty of \$1,340.00 plus interest of \$3.85 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$ 223.33	\$1.10	\$ 224.43
2	\$222.33	\$0.92	\$ 224.25
3	\$223.33	\$0.73	\$ 224.06
4	\$223.33	\$0.55	\$ 223.88
5	\$223.33	\$0.37	\$ 223.70
6	\$223.35	\$0.18	\$ 223.53
Total	\$1,340.00	\$3.85	\$1,343.85

40. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2015-0133**;
 - b. All checks shall be made payable to "**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

Primary Contact: Craig Steffen 513-487-2091
 Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
 Cincinnati Finance Center
 P.O. Box 979077
 1005 Convention Plaza SL-MO-C2-GL
 St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

41. Respondent may also pay the amount described in Paragraph 37 (or Paragraph 39 if applicable) above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US 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, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis Ramalho (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

42. 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 Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
43. 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.
44. 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).
45. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

46. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations

alleged in Section IV (“Findings of Fact and Conclusions of Law”), above. 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.

VIII. OTHER APPLICABLE LAWS

47. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

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

X. RESERVATION OF RIGHTS

49. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged against the Respondent in the Complaint. 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 and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

50. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent’s successors, agents and assigns.

XII. EFFECTIVE DATE

51. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

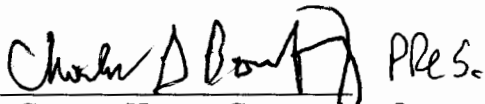
52. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

53. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

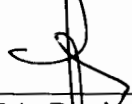
For Respondent:

Date:


Elk Custom Homes Contracting, Inc.
Charles G. Bonifay
President
(814) 834-7606

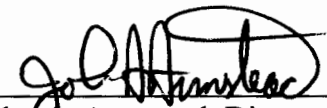
For Complainant:

Date: ~~201~~ 2 4 2015


US EPA, Region III
Louis Ramalho, 3RC50
Sr. Assistant Regional Counsel
(215) 814-2603

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

Date: 7.9.15

By: 
John A. Armstead, Director
Land and Chemicals Division,
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Docket No.: TSCA-03-2015-0133

Elk Custom Homes Contracting, Inc.
226 Laurel Estates
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RESPONDENT

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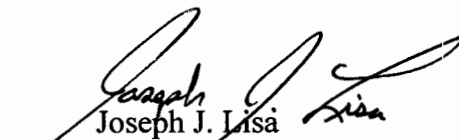
FINAL ORDER

The Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III and Respondent, Elk Custom Homes Contracting, Inc., 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the Lead; Renovation, Repair, and Painting Program, 40 C.F.R. Part 745, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **One Thousand Three Hundred and Forty Dollars (\$1,340.00)** in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Date: July 21, 2015


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