

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)	
)	EPA Docket No.
Vanderbilt Development Corporation and)	<u>TSCA-01-2021-0005</u>
Manchester Commons Associates)	
1601 Depot Street)	
Manchester Center, Vermont 05255)	
)	CONSENT AGREEMENT
)	AND
Respondent.)	FINAL ORDER
)	
<i>Proceeding under Section 16(a) of the</i>)	
<i>Toxic Substances Control Act,</i>)	
<i>42 U.S.C. § 2615(a).</i>)	
)	

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the U.S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), alleges that Respondents, Vanderbilt Development Corporation and Manchester Commons Associates, violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L, as amended (collectively referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”).

This Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of

Practice”), at 40 C.F.R. Part 22. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

I. STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (the “Act”) in response to findings that low-level lead poisoning was widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be considered in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

2. In 1996, EPA promulgated regulations to implement Section 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d, and Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule”). In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA (*Lead Hazard Information Pamphlet – Renovation of Target Housing*), 15 U.S.C. § 2686(b), and those regulations are set

forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule”).

3. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.”

4. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

- i. Provide to lessees an EPA–approved lead hazard information pamphlet;
- ii. Ensure that the contract to lease includes a Lead Warning Statement;
- iii. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof;
- iv. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available; and
- v. Ensure that the contract to lease includes a statement by the lessee affirming receipt of the information set out in §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(6).

5. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirements of the Disclosure Rule is a violation of TSCA Section 409, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA Section 409, specific civil penalties apply under TSCA Section 16.

6. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

7. Pursuant to 40 C.F.R. § 745.103 and 40 C.F.R. § 745.83, the housing stock addressed by the Disclosure Rule and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, or any “0-bedroom dwelling” (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

9. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either 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.

10. For purposes of complying with Section 406(b) of TSCA, 15 U.S.C. § 2686(b), and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*”

(“Renovate Right”) (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

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. 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, ceiling, 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. The term renovation does not include “minor repair and maintenance activities.”

13. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

14. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means 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 by an EPA-authorized State or Tribal program.

15. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this CAFO, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Assign a certified renovator, and ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iii. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iv. Perform renovations in compliance with applicable work practice standards for any renovation, repair, and painting activities conducted; and,
- v. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a), 745.89(d), 745.85, and 745.86(a)-(b).

16. Pursuant to Section 409 of TSCA, 15 U.S.C § 2689, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA, such as the RRP Rule.

Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C §§ 2614 and 2689.

17. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who

violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

18. Section 16(a) of TSCA, Section 1018(b)(5) of the Act, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of \$10,000 per violation of the Disclosure Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (“Debt Collection Improvement Act”), 40 C.F.R. Part 19 and the 2015 Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after January 13, 2020, is subject to a penalty of up to \$18,149 per day per violation (See 85 Fed. Reg. 8, January 13, 2020).

19. TSCA Section 16(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Under the Debt Collection Improvement Act, 40 C.F.R. Part 19 and the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after January 13, 2020, is subject to a penalty of up to \$40,576 per day per violation. (See 85 Fed. Reg. 8, January 13, 2020).

II. GENERAL ALLEGATIONS

20. Both Respondents are domestic profit corporations organized under the laws of the State of Vermont. Respondents are related owners of residential properties. Respondent Vanderbilt is a property management company that also conducts residential property renovation. Respondents own and manage at least four rental income properties located in and around Manchester Center, Vermont. Their principal place of business is located at 1601 Depot Street, Manchester, Vermont. Another related company, F.H. Corp., which also lists 1601 Depot

Street, Manchester, Vermont as its business address, is the owner of a target housing property located at 48 Center Hill Road, Manchester, Vermont. That property is managed by Respondent Vanderbilt. The properties that are the subjects of this action, owners, property managers, and dates of construction are as follows:

Property	Owner	Property Manager	Date Constructed
87 Cone Road, Unit 1, 2, and 3	Vanderbilt Development Corporation	Vanderbilt Development Corporation	1963
56 Elm Street	Manchester Commons Associates	Vanderbilt Development Corporation	1880
48 Center Hill Road, Units 1, 2, and 3	F.H. Corporation	Vanderbilt Development Corporation	On or around 1900

21. Vanderbilt utilized its employees to conduct renovation activities at 48 Center Hill Road, Manchester, Vermont.

22. The president of Vanderbilt, Lana Hauben, also is the secretary and director of F.H. Corp., and the registered agent for Manchester Commons listed in paragraph 20 above.

23. On July 18, 2019, an EPA representative conducted an inspection at 48 Center Hill Road, Manchester, Vermont (“48 Center Hill Road”), where a renovation was being performed, to determine Vanderbilt’s compliance with the RRP Rule, (“RRP Inspection”).

24. On July 18, 2019, an EPA representative then conducted a second compliance inspection regarding the Disclosure Rule at Respondents’ office at 1601 Depot Street, in

Manchester, VT (the “1018 Inspection”) regarding 87 Cone Road, Units 1, 2 and 3 (“87 Cone Road”) and 56 Elm Street (“56 Elm Street”).

25. At the time of the violations alleged in this Complaint, Vanderbilt, as the property manager and owner, offered 87 Cone Road, Units 1, 2, and 3 for lease. Vanderbilt and Manchester Commons, as the property manager and owner of the property, respectively, offered 56 Elm Street for lease. Accordingly, Respondents Vanderbilt and Manchester Commons are “lessors” as defined in 40 C.F.R. § 745.103.

26. At all times relevant to the allegations in this CAFO, Respondents Vanderbilt and Manchester Commons offered for lease the following apartments that were “residential dwellings,” as defined in 40 C.F.R. § 745.103:

Address	Owner	Manager
87 Cone Road, Unit 1	Vanderbilt	Vanderbilt
87 Cone Road, Unit 2	Vanderbilt	Vanderbilt
87 Cone Road, Unit 3	Vanderbilt	Vanderbilt
56 Elm Street	Manchester Commons	Vanderbilt

27. All of the apartment units listed above are or were, at the time of the violations alleged in this CAFO, “target housing,” as defined in 40 C.F.R. § 745.103. Furthermore, none of those apartment units satisfies the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), the Disclosure Rule (including 40 C.F.R. § 745.101), or the RRP Rule (including 40 C.F.R. § 745.82).

28. At all times relevant to the RRP Rule violations alleged in this CAFO, Respondent Vanderbilt was a “firm,” as defined in 40 C.F.R. § 746.83.

29. At all times relevant to the RRP Rule violations alleged in this complaint, 48 Center Hill Road was being converted to a “residential dwelling,” as defined in 40 C.F.R. §

745.103. Furthermore, 48 Center Hill Road does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

30. At all times relevant to the RRP rule violations alleged in this CAFO, 48 Center Hill Road was and is “target housing” as defined in 40 C.F.R. § 745.103. Furthermore, 48 Center Hill Road does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), the Disclosure Rule (including 40 C.F.R. § 745.101), or the RRP Rule (including 40 C.F.R. § 745.82).

31. At all times relevant to the RRP Rule violations alleged in this CAFO, Respondent Vanderbilt’s employees performed renovation activities at 48 Center Hill Road, Manchester, VT, that constituted “renovations” within the meaning of 40 C.F.R. § 745.83.

32. The renovation activities performed by Respondent Vanderbilt at 48 Center Hill Road constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule.

III. VIOLATIONS

DISCLOSURE RULE VIOLATIONS

33. EPA has identified the following violations of the Act and the Disclosure Rule based on documents and other information obtained from Respondents during or as a result of the RRP and 1018 Inspections and EPA’s investigation of the facts and circumstances underlying the violations.

34. Each of the three below-referenced violations alleged in this CAFO is a prohibited act under TSCA Section 409, 15 U.S.C. § 2689 and 40 C.F.R. § 745.118(e), and each is a

violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

COUNT ONE

Failure to Provide Lead Hazard Information Pamphlet

35. Paragraphs 1 through 34, above, are incorporated by reference as if fully set forth herein.

36. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet (*Protect Your Family From Lead in Your Home*) or an equivalent pamphlet that has been approved for use in particular states by EPA.

37. Respondent Vanderbilt failed to provide each of the following tenants with an EPA-approved lead hazard information pamphlet before the tenants entered into a contract to lease the specific apartments indicated, below:

- i. The lessee who became obligated to rent 87 Cone Road, Unit 1, on or about April 2, 2019;
- ii. The lessee who became obligated to rent 87 Cone Road, Unit 2, on or about October 15, 2018; and
- iii. The lessees who became obligated to rent 87 Cone Road, Unit 3, on or about November 11, 2016.

38. Respondents Vanderbilt and Manchester Commons failed to provide an EPA approved lead hazard information pamphlet before the tenant entered into a contract to lease the specific apartment indicated, below:

- i. The lessee who became obligated to rent 56 Elm Street, on or about July 27, 2017.

39. Respondents Vanderbilt and Manchester Commons's failures to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees

becoming obligated under a contract to lease target housing violated 40 C.F.R. § 745.107(a)(1) and TSCA Section 409, 15 U.S.C. § 2689.

40. Each of the above-listed violations alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

COUNT TWO

Failure to Include a Lead Warning Statement

41. Paragraphs 1 through 40, above, are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 745.113(b)(1), a lessor must ensure that, before the lessee is obligated under any contract to lease target housing, each contract to lease target housing includes a Lead Warning Statement within, or as an attachment to, the contract.

43. Respondent Vanderbilt failed to include a Lead Warning Statement in, or attached to, its contracts with each of the following lessees:

- i. The lessee who became obligated to rent 87 Cone Road, Unit 1, on or about April 2, 2019;
- ii. The lessee who became obligated to rent 87 Cone Road, Unit 2, on or about October 15, 2018; and
- iii. The lessee who became obligated to rent 87 Cone Road, Unit 3, on or about November 11, 2016.

44. Respondents Vanderbilt and Manchester Commons failed to provide an EPA approved lead hazard information pamphlet before the tenant entered into a contract to lease the specific apartment indicated, below:

- i. The lessee who became obligated to rent 56 Elm Street, on or about July 27,

2017.

45. Respondents Manchester Commons and Vanderbilt's failures to include a Lead Warning Statement in or attached to lease contracts before the lessees became obligated to lease target housing violated 40 C.F.R. § 745.113(b)(1) and TSCA Section 409.

46. Each of the above-listed instances of violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

COUNT THREE

Failure to Disclose the Presence of Lead-Based Paint/Hazards or Lack of Knowledge Thereof

47. Paragraphs 1 through 46, above, are incorporated by reference as if fully set forth herein.

48. Pursuant to 40 C.F.R. § 745.113(b)(3), a lessor must ensure that before a lessee is obligated under any contract to lease target housing, the contract to lease target housing includes a list of any records or reports available pertaining to lead based paint and/or lead based paint hazards in the target housing being leased or, if no such records or reports are available, the lessor shall so indicate.

49. Respondent Vanderbilt did not include, before lessees became obligated to lease target housing, a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or an indication that no such records or reports are available in or attached to its contracts with each of the following lessees:

- i. The lessee who became obligated to rent 87 Cone Road, Unit 1, on or about April 2, 2019;
- ii. The lessee who became obligated to rent 87 Cone Road, Unit 2, on or about October 15, 2018; and

iii. The lessee who became obligated to rent 87 Cone Road, Unit 3, on or about November 11, 2016.

50. Respondents Vanderbilt and Manchester Commons did not include, before the lessee became obligated to lease the target housing, a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or an indication that no such records or reports are available in or attached to its contract with the following lessee:

i. The lessee who became obligated to rent 56 Elm Street, on or about July 27, 2017.

51. Respondents Manchester Commons and Vanderbilt's failures to include a list of records or reports, or a statement indicating none is available, in or attached to lease contracts to rent target housing violated 40 C.F.R. § 745.113(b)(3), and TSCA Section 409.

52. Each of the above-listed instances of violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

53. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the Inspection and EPA's investigation of the facts and circumstances underlying the violations.

COUNT FOUR

Failure of Firm to Obtain Certification

55. Paragraphs 1 through 54, above, are incorporated by reference as if fully set forth herein.

56. Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities

without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a)(1), firms performing renovations for compensation must apply to EPA for certification to perform renovations.

57. Starting in May 2018 and continuing through July 2018, Respondent Vanderbilt's employee(s) converted the 48 Center Hill Road former retail space into three residential apartments ("the 48 Center Hill Road Renovation"). Respondent Vanderbilt conducted interior and exterior renovations of the property. The work disturbed over six (6) square feet of interior painted surface and over 20 square feet of exterior painted surface. The 48 Center Hill Road Renovation did not qualify as minor maintenance and repair activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. §745.82.

58. As of the date of the RRP Inspection, Respondent Vanderbilt had not applied for or obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a)(1).

59. At no time before or during the 48 Center Hill Road Renovation was Respondent Vanderbilt certified as a firm.

60. Respondent Vanderbilt's performance of the 48 Center Hill Road Renovation without having applied for or obtained firm certification under 40 C.F.R. § 745.89 constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and TSCA Section 409.

61. The above-listed violation alleged in this is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a,) and are violations for which penalties may be assessed pursuant to Section 16 of TSCA.

COUNT FIVE

Failure to Assign a Certified Renovator

62. Paragraphs 1 through 61, above, are incorporated by reference as if fully set forth herein.

63. Pursuant to 40 C.F.R. § 745.89(d)(1), firms 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. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

64. At no time before the RRP Inspection of 48 Center Hill Road were individuals performing the renovation activities on behalf of Vanderbilt certified renovators or trained by a certified renovator, as specified under 40 C.F.R. § 745.89(d)(1).

65. At no time before or during the RRP Inspection was a certified renovator assigned to the 48 Center Hill Road Renovation, as specified under 40 C.F.R. § 745.89(d)(2).

66. Respondent Vanderbilt's failure to ensure individuals performing the renovation activities on behalf of Respondent were certified renovators or trained by a certified renovator violated 40 C.F.R. § 745.89(d)(1). Respondent Vanderbilt's failure to ensure a certified renovator was assigned to the 48 Center Hill Road Renovation and carried out all of the responsibilities in 40 C.F.R. § 745.90 violated 40 C.F.R. § 745.89(d)(2).

67. The above-listed violations alleged in this count are prohibited acts under TSCA Section 409 and 40 C.F.R. § 745.87(a), and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

COUNT SIX

Failure to Cover Ground with Plastic Sheeting

68. Paragraphs 1 through 67, above, are incorporated by reference as if fully set forth herein.

69. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2) the firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

71. While performing the 48 Center Hill Road Renovation, which included exterior renovations, Respondent Vanderbilt did not cover the ground with plastic sheeting or other impermeable material in the work area to collect falling debris.

72. Respondent Vanderbilt's failure to ensure that the ground was covered with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, at the 48 Center Hill Road Renovation constitutes a violation of 40 C.F.R. § 745.89(d)(3) and 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

73. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. TERMS OF SETTLEMENT

74. This CAFO shall apply to and be binding upon Respondents, their officers, successors and assigns.

75. Respondents stipulate that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondents consent for purposes of settlement to the terms of this CAFO.

76. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO, and waive their right to appeal the Final Order accompanying this Consent Agreement.

77. Respondents agree to operate their business in compliance with Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA and the Act, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart F.

78. As of the effective date of this CAFO, Respondent Vanderbilt will provide the owner and adult occupant(s) of target housing, where it performs renovations, with an EPA-approved lead hazard information pamphlet, in compliance with 40 C.F.R. § 745.84(a)(2).

79. As of the effective date of this CAFO, Respondents will provide the lessee and adult occupant(s) of target housing a Lead Warning Statement in or attached to lease contracts before the lessees became obligated to lease target housing in compliance with 40 C.F.R. § 745.113(b)(1).

80. As of the effective date of this CAFO, Respondents will include a list of records

or reports, or a statement indicating none is available, in or attached to a lease contract to rent target housing in, compliance with 40 C.F.R. § 745.113(b)(3).

81. Respondent Vanderbilt has applied for and obtained EPA firm certification to perform renovations or dust sampling in compliance with 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii).

82. As of the effective date of this CAFO, Respondent Vanderbilt will assign a certified renovator to each renovation performed by Respondent in compliance with 40 C.F.R. § 745.89(d)(2).

83. As of the effective date of this CAFO, Respondent Vanderbilt will ensure that at target housing where it performs exterior renovations, the ground is covered with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, in compliance with 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

84. As of the effective date of this CAFO, Respondent Vanderbilt will retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of any renovation subject to the RRP Rule in compliance with 40 C.F.R. § 745.86(a).

85. Pursuant to Section 16 of TSCA, 15 U.S.C § 2615, based upon the nature of the alleged violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of thirteen thousand four hundred ninety-three dollars (\$13,493).

86. Respondent consents to the issuance of this CAFO and for the purposes of

settlement to the payment of the civil penalty cited in the foregoing paragraph.

87. Respondents shall pay the penalty of thirteen thousand four hundred ninety-three dollars (\$13,493) within 30 days of the effective date of this CAFO in the following manner: The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of Vanderbilt Development Corporation and Manchester Commons Associates*; Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (TSCA-01-2021-0005), and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

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

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to (copy to Andrea Simpson may be sent by email):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-6
Boston, MA 02109-3912

and

Andrea Simpson, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-2
Boston, MA 02109-3912
simpson.andrea@epa.gov

88. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents’ violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents’ violation of any applicable provision of law.

89. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

90. This CAFO shall not relieve Respondents of their obligation to comply with all

applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

91. This CAFO constitutes a settlement by and between EPA and Respondents of all claims for civil penalties pursuant to TSCA for the violations alleged herein. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.


92. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

93. Each undersigned representative of the Parties to this CAFO certifies that he, she, or they are fully authorized by the Party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

94. Complainant and Respondents, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by electronic mail, to the following address: Craig@vermont-outlets.com. Complainant has provided Respondents with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

95. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondents specifically waive any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For Respondents:



Craig Hunter, Vice President
Vanderbilt Development Corporation

Date: 10/20/2020

For Complainant, U.S. EPA, Region 1:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
EPA, Region 1

Date: _____

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA’s Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondents are ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

(Date)

LeAnn W. Jensen, Regional Judicial Officer
U.S. EPA, Region 1