

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2 Filed September 30 2020 @ 3:34pm

USEPA – Region II

Regional Hearing Clerk

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. TSCA-02-2020-9279

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In the Matter of :
:
CHLOE CONSTRUCTION :
COMPANY LLC, :
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
----- X

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, set out at 40 Code of Federal Regulations ("C.F.R.") Part 22. Pursuant to 40 C.F.R. § 22.13(b), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty... ." Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (Complainant) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Chloe Construction Company LLC ("Chloe" or "Respondent").
2. Chloe's primary place of business is 114 West 29th Street, New York, New York 10001.
3. Chloe is a firm that engages (and has engaged at all times relevant hereto) in lead-based paint activities, specifically, renovation, and is subject to the regulations and requirements pertaining to renovation activities promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E (the "Renovation, Repair, and Painting (RRP) Rule").
4. Respondent, at all times relevant herein, is and was a "person" as that term is defined at 40 C.F.R. § 745.83.

5. Beginning on or about December 27, 2016, and continuing through September 8, 2017, Chloe conducted renovations in numerous vacant apartments in a building situated at 1708 Summerfield Street (a/k/a 1075 Cyprus Avenue), Ridgewood, NY 10035 (“Summerfield Property”).
6. The Summerfield Property, at all times relevant herein, is and was “target housing” as that phrase is defined by Section 401 of TSCA, 15 U.S.C. § 2681 and 40 C.F.R. § 745.103.
7. Respondent’s activities at the Summerfield Property constituted “renovations” as that term is defined by 40 C.F.R. § 745.83, performed for compensation.
8. On or about February 22, 2017, a representative of the United States Environmental Protection Agency, Region 2 (“EPA”), initiated an investigation of the renovation activities Respondent conducted at the Summerfield Property.
9. Based on the EPA investigation, including information obtained from the New York City Department of Health & Mental Hygiene (“DOH”) in relation to inspections and lead samples the DOH took at the Summerfield Property, and the Respondent’s September 8, 2017 Response to an EPA Information Request Letter (“IRL”) dated February 22, 2017, EPA determined that the renovations performed by Respondent at the Summerfield Property were subject to the requirements of the RRP Rule.
10. Based on review of the information described in paragraph 9, above, of the Findings of Fact and Conclusions of Law, EPA further determined that Respondent failed to comply with certain requirements of the RRP Rule in undertaking its renovations at the Summerfield Property.
11. Respondent failed to obtain an initial firm RRP certification from EPA before engaging in renovation activities at the Summerfield Property in violation of 40 C.F.R. §§ 745.81(a)(2)(i) and 745.89(a).
12. Respondent failed to provide the owner of the Summerfield Property with an EPA-approved lead hazard information pamphlet in violation of 40 C.F.R. § 745.84(a)(1).
13. Respondent failed to ensure that a certified renovator was assigned to the renovation of vacant apartments in violation of 40 C.F.R. § 745.89(d)(2).
14. Respondent failed to retain records necessary to demonstrate its compliance with the RRP requirements pursuant to 40 C.F.R. § 745.86.
15. Respondent’s failures to comply with the requirements set forth at 40 C.F.R. Part 745, Subpart E, constitute violations of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be assessed under TSCA § 16(a), 15 U.S.C. § 2615(a).
16. On January 8, 2020, EPA held a settlement conference with Respondent to discuss EPA’s findings regarding Respondent’s alleged failures to comply with TSCA and the RRP Rule requirements during its renovation activities at the Summerfield Property.
17. Following that settlement meeting, Chloe, as it had promised, submitted: (a) its request for an RRP firm certification, which EPA-HQ approved and issued on March 2, 2020; (b) its compliance plan, dated February 25, 2020; and (c) a copy of its 2018 federal tax return, which was received by Region 2 on March 5, 2020.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously, Respondent: (a) admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; (b) neither admits nor denies the “Findings of Fact and Conclusions of Law” as set forth above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it may have to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the “effective date”). It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall, commencing on the date of the execution of the Final Order accompanying this Consent Agreement, maintain compliance with all applicable regulatory requirements of 40 C.F.R. Part 745, Subpart E, and adhere to the provisions of its compliance plan dated February 25, 2020.

2. Respondent shall pay a civil penalty to EPA in the amount of **SIXTEEN THOUSAND, SEVEN HUNDRED (\$16,700) DOLLARS**, exclusive of interest. This civil penalty shall be paid in four installments, inclusive of interest, within two years of the date the Regional Judicial Officer signs the Final Order accompanying this Consent Agreement (the “calculation date”).

3. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum for calendar year 2020. With applicable interest at the rate of one percent (1%) per annum on the outstanding principal balance, Respondent shall make four equal payments totaling Seventeen Thousand Thirteen Dollars and twelve cents (\$17,013.12), inclusive of interest as follows:

The first installment of **FOUR THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS and TWENTY-EIGHT CENTS (\$4,253.28)** is to be received *on or before* (90) calendar days from the calculation date (“due date #1”);

The second installment of **FOUR THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS and TWENTY-EIGHT CENTS (\$4,253.28)** is to be received *on or before* three hundred sixty (360) calendar days from the calculation date (“due date #2”);

The third installment of **FOUR THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS and TWENTY-EIGHT CENTS (\$4,253.28)** is to be received *on or before* five hundred forty (540) calendar days from the calculation date (“due date #3”); and

The fourth installment and final installment of **FOUR THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS and TWENTY-NINE CENTS (\$4,253.29)** is to be received *on or before* seven hundred twenty (720) calendar days from the calculation date (“due date #4”).

4. These four individual payments, in accordance with the terms and schedule of this Consent Agreement, shall each be made by cashier’s check, certified check or electronically via Fedwire. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes a payment by cashier’s check or certified check, then each such check shall be *received* at the address listed below in section a of this paragraph on or before its due date specified above. If Respondent makes a payment electronically via Fedwire, then each such Fedwire payment shall be *received* as described in section b of this paragraph on or before its due date specified in the preceding paragraph:

a. If payments are made by cashier’s check or by certified check, such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Chloe Construction Company LLC, Docket Number TSCA-02-2020-9279***. If payments are made by either form of check, such payment shall be mailed to the following address:

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

b. Alternatively, if Respondent chooses to make payments electronically via Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:

- i. Amount of Payment;
- ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
- iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
- v. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency;
- vi. Name of Respondent: **Chloe Construction Company LLC;**
- vii. Case docket number: **TSCA-02-2020-9279.**

5. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

6. If Respondent fails to make timely payment of any one of the required installments in accordance with the schedule set forth in paragraph 3, above, of this Consent Agreement, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the administrative handling charges, late penalty charges, and additional interest described in paragraphs 7-9, below, of this Consent Agreement, in the event of any such failure or default

and shall remit such payment in accordance with the payment instructions set forth in paragraph 4, above, of this Consent Agreement.

7. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date(s) specified above. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

8. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

9. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

10. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

11. The civil penalty provided for in this section (including any payment(s) for interest or late payment and handling charges that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

12. Respondent certifies it is in compliance with all applicable requirements of TSCA and its implementing regulations regarding Residential Property Renovation found at 40 C.F.R. Part 745, Subpart E.

13. Respondent certifies that the information and documentation it submitted to EPA on March 5, 2020 regarding its finances including the 2018 federal tax it submitted to EPA is accurate, complete, and not misleading. EPA has relied on the accuracy of this submitted financial information during the negotiation of the settlement.

14. Respondent further certifies under penalty of law, that COVID-19 negatively impacted its financial health and Respondent believes, to the best of its ability, that it has lost approximately 25% of its gross revenue from its lead-based paint activities by being unable to conduct any renovation activities between the end of March 2020 and the middle of June 2020.

15. Respondent further requested of EPA that payment of the \$16,700 civil penalty be made in installment payments because of its cash flow interruption and overall financial circumstances brought on by COVID-19 at the time of execution of the consent agreement.

16. Respondent acknowledges its awareness that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's financial condition and gross annual income is false or, in

any material respect, inaccurate.

17. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making, by installment payments, the entire amount of the civil penalty in accordance with the terms and schedule set forth in paragraph 3, above, of this Consent Agreement.

18. Complainant shall email to the representatives of the Respondent designated by their email addresses below a copy of the fully executed consent agreement and accompanying executed final order, and Respondent consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

Kevin Maleike at the email address: kevin@kenjackson.com

Bob Webb at the email address: bob@kenjackson.com

Delivery of the fully executed documents to the email addresses in this paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

19. Any responses, documentation and other communications submitted to EPA in connection with this Consent Agreement shall be sent to the following:

Demian Ellis
Enforcement Coordinator
Pesticides and Toxic Substances Compliance Branch
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837
ellis.demian@epa.gov

Gary H. Nurkin
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
nurkin.gary@epa.gov

Unless the above-named EPA contacts are subsequently advised otherwise by email, EPA shall direct any future communications to Respondent related to this proceeding, including any communications related to failure to make payment in accordance with the provisions of this CAFO, to the email addresses noted in paragraph 18, above, of this section.

20. This CAFO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

21. Full payment of the penalty amount set forth above in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve Respondent's liability for federal civil penalties for the facts and violations described in paragraphs 11-14 of the "Findings of Fact and Conclusions of Law" section, above. Nothing herein shall affect the authority of the EPA (or the

United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to, *inter alia*, Respondent's conduct of lead-based paint renovation activities.

22. Respondent hereby waives its right to seek or to obtain any hearing on the administrative claims set forth in the Findings of Fact and Conclusions of Law of this document, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order.

23. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: (a) to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United State to enforce the provisions of this Consent Agreement and Final Order.

24. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

25. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

26. Nothing in this CAFO is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any TSCA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

27. If any requirement or obligation of this CAFO is held invalid or stayed by a court of competent jurisdiction, such action is not intended, and shall not, negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining requirements and provisions of this CAFO.

28. Each party shall bear its own costs and fees in connection with this proceeding.

29. This CAFO is intended to, and shall, be fully binding upon the parties, their officers, directors, employees, successors and/or assigns (as applicable).

30. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and further, that they are authorized to bind the party on whose behalf they are signing to comply with the applicable terms, conditions, and requirements set forth in this Consent Agreement.

In the Matter of Chloe Construction Company LLC
Docket No. TSCA-02-2020-9279

RESPONDENT:

BY: 
(Signature)

NAME: **Jacky Piamenta**
(Please Print)


TITLE: **Owner, Chloe Construction, LLC**

DATE: **09/29/2020**

In the Matter of Chloe Construction Company LLC
Docket No. TSCA-02-2020-9279

COMPLAINANT:

**KATHLEEN
ANDERSON**

 Digitally signed by KATHLEEN
ANDERSON
Date: 2020.09.29 18:47:14 -04'00'

For _____
Dore F. LaPosta, Director
Enforcement and Compliance
Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: _____

In the Matter of Chloe Construction Company LLC
Docket No. TSCA-02-2020-9279

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Chloe Construction Company LLC*, bearing Docket Number TSCA-02-2020-9279. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

DATED: **Sept. 30, 2020**
New York, New York

HELEN FERRARA Digitally signed by HELEN
FERRARA
Date: 2020.09.30 10:10:05 -04'00'

HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency –Region 2

**In the Matter of Chloe Construction Company LLC
Docket No. TSCA-02-2020-9279**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing docket number TSCA-02-2020-9279, in the following manner to the respective addressees below:

By Email:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
Maples.Karen@epa.gov

By Email:

Kevin Maleike
kevin@kenjackson.com

Bob Webb
bob@kenjackson.com

Chloe Construction Company, LLC
114 West 29th Street,
New York, New York 10001.

Dated: _____, 2020
