

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2024-0011</b>
	)	
<b>MIG East, LLC, d/b/a</b>	)	<b>Proceeding to Assess a Civil</b>
<b>MIG Construction</b>	)	<b>Penalty Under Section 16(a) of the</b>
<b>Detroit, Michigan</b>	)	<b>Toxic Substances Control Act,</b>
	)	<b>15 U.S.C. § 2615(a)</b>
<b>Respondent.</b>	)	

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**CONSENT AGREEMENT AND FINAL ORDER**

**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 Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3) of 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 Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, brings this administrative action by lawful delegation.

3. MIG East, LLC (MIG East) is a general contractor doing business as MIG Construction with a place of business located at 422 W Congress Street, Suite 400, Detroit, Michigan 48226.

4. On February 22, 2023, EPA issued MIG East a Notice of Intent to File an Administrative Complaint based on violations of TSCA and regulations promulgated therein related to MIG East’s renovation work in a multi-unit residential housing building in Detroit, Michigan.

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5. On December 19, 2023, prior to resolving its TSCA liability, MIG East filed a voluntary petition for relief under Chapter 11, Subchapter V with the United States Bankruptcy Court for the Eastern District of Michigan (the Bankruptcy Court), which has been administered as *In re: MIG East LLC*, Case No. 23-51096-MAR (the Bankruptcy Case).

6. 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).

7. 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 the best interests of the parties, the public, and MIG East's bankruptcy estate, including its creditors.

8. MIG East consents to the terms of this CAFO, including the assessment of the civil penalty specified below, subject to the approval of its entry into this CAFO by the Bankruptcy Court.

**Jurisdiction and Waiver of Right to Hearing**

9. MIG East admits the jurisdictional allegations set forth in this CAFO.

10. MIG East neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

11. As set forth in this CAFO, MIG East waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that MIG East may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in

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this CAFO, and its right to appeal this CAFO. MIG East also consents to the issuance of this CAFO without further adjudication.

### **Statutory and Regulatory Background**

12. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under age six (6); at low levels, lead poisoning in children causes intelligence quotient 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. *See* 42 U.S.C. § 4851.

13. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

14. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires the Administrator of 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.

15. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk

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of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

16. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), requires the Administrator of EPA to promulgate regulations to require 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.

17. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

18. Section 11 of TSCA, 15 U.S.C. § 2610, provides EPA with authority to conduct inspections upon the presentation of appropriate credentials and written notice.

19. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 745.87.

20. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

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21. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682, 2686, and 2687, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms engaged in lead-based paint activities; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. 73 *Fed. Reg.* 21691 (April 22, 2008).

22. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

23. 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.

24. 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 this part (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; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

25. 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.

26. 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.

27. 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.

28. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a).

29. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

30. 40 C.F.R. § 745.89(d)(1) requires the firm performing the renovation 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.

31. 40 C.F.R. § 745.89(d)(2) requires that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

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32. 40 C.F.R. § 745.89(d)(3) requires all renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

33. 40 C.F.R. § 745.85(a)(2)(i)(A) requires the firm to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

34. 40 C.F.R. § 745.85(a)(2)(i)(D) requires the firm to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, or use a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.

35. 40 C.F.R. § 745.85(a)(2)(i)(E) requires the firm to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

36. 40 C.F.R. § 745.85(a)(4)(i) requires the firm performing the renovation to contain the waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

37. 40 C.F.R. § 745.85(a)(4)(ii) requires the firm store all waste that has been collected from the renovation activities at the conclusion of each work day and at the conclusion of the renovation in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

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38. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

39. 40 C.F.R. § 745.86(b)(6) requires a firm to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

40. Under 15 U.S.C. § 1689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

41. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$43,611 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 12, 2022.

#### **General Allegations**

42. Paragraphs 1 through 41 of this CAFO are herein incorporated by reference.

43. At all times relevant to this CAFO, MIG East was a firm as defined by 40 C.F.R. § 745.83.

44. On September 9, 2019 and August 11, 2020, the Michigan Department of Health and Human Services (MDHHS) conducted onsite inspections at 10 W. Adams Street, Detroit,

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Michigan (the Site) for compliance with Sections 402, 406, and 407 of TSCA and regulations at 40 C.F.R. Part 745, Subparts E (“Renovation, Repair, and Painting Rule” or the “RRP Rule”). MDHHS inspectors toured the Site’s common areas including hallways, elevator for residential use, and residential units 202 (vacant), 401 (occupied), and 1401 (occupied). MDHHS inspectors also observed the exterior of the building including surrounding sidewalks and exterior façade.

45. MDHHS inspectors also spoke with representatives from B&B Glass Company (B&B Glass) while observing renovation activities in residential units. A representative from B&B Glass told the MDHHS inspectors that the company had contracted with MIG East to perform the window replacement at the Site.

46. EPA received a referral dated August 19, 2020 from MDHHS regarding MIG East’s compliance with Sections 402, 406, and 407 of TSCA related to the work at the Site.

47. On September 15, 2020, EPA issued MIG East a “Request for Information under 40 C.F.R. § 745.86” letter dated September 14, 2020 via email seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation, and renovation records maintained as required by the TSCA RRP Rule.

48. EPA did not receive a response from MIG East regarding EPA’s Request for Information.

49. On November 12, 2020, EPA issued MIG East a second “Request for Information under 40 C.F.R. § 745.86” letter dated November 12, 2020, via certified mail.

50. EPA did not receive a response regarding its second Request for Information.

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51. On April 6, 2021, EPA issued an administrative subpoena to MIG East, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking the same information as requested in the two Information Requests.

52. On July 26, 2021, MIG East provided EPA via electronic mail documents requested by the administrative subpoena.

53. Based on information provided by MIG East and building-year information publicly available on the City of Detroit’s property value assessment website (<https://bsaonline.com/?uid=155>) (accessed on April 21, 2021), MIG East performed or directed workers to perform renovations for compensation in residential housing built prior to 1978, as detailed in this Table:

<b>Residential Property Address</b>	<b>Unit Number</b>	<b>Built Year</b>	<b>Occupancy</b>	<b>Work Dates</b>	<b>Contracted Work</b>
10 W Adams Avenue, Detroit, Michigan 48226	201	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	202	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	401	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	402	1955	Vacant	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	601	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	603	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	702	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement

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10 W Adams Avenue, Detroit, Michigan 48226	802	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	803	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	1001	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	1102	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement
10 W Adams Avenue, Detroit, Michigan 48226	1202	1955	Occupied	01/14/2019 to 12/18/2020	Window replacement

54. At the contracted renovations referenced in Paragraph 53, MIG East performed or directed to perform modifications of the building’s existing structure that resulted in disturbance of painted surfaces and were therefore a renovation as defined in 40 C.F.R. § 745.83.

55. The renovations referenced in Paragraph 53 were performed at residential housing built prior to 1978, and therefore the residential housing was target housing as defined in 40 C.F.R. § 745.103.

**Count 1 – Failure to Obtain Firm Certification**

56. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

57. MIG East was not certified as a firm, under 40 C.F.R. § 745.89, during the renovations described in Paragraph 53 and did not qualify for an exemption under 40 C.F.R. § 745.82(a).

58. MIG East’s performance of the renovations, as described in Paragraph 53, without certification from EPA constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

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**Count 2 – Failure to Remove or Cover all Objects from the Work Area with Plastic**

**Sheeting**

59. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

60. On August 11, 2020, tenant’s belongings in unit 1401, including furniture, rugs, and window coverings, were not removed from the unit and not covered with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

61. MIG East’s failure to remove all objects from the work area in unit 1401, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed during the renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(i)(A), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Counts 3 to 4 – Failure to Cover Floor Surface with Plastic Sheeting or Erect Vertical**

**Containment System**

62. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

63. On September 9, 2019, MDHHS observed B&B Glass workers in unit 401. The floor of the unit did not have taped-down plastic sheeting or other impermeable material covering the floor. Unit 401 did not have a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling.

64. On August 11, 2020, in unit 1401, the floor containment was removed from the unit while a B&B Glass worker was installing interior window trim. Unit 1401 did not have a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling.

65. MIG East’s failure to cover the floor surfaces at units 401 and 1401 with taped-down plastic sheeting or other impermeable material in the work area six (6) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, or use a

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vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls during the renovations constitutes two violations of 40 C.F.R. § 745.85(a)(2)(i)(D), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Count 5 – Failure to Use Precautions to Ensure All Personnel, Tools and Other Items Are**

**Free of Dust and Debris**

66. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

67. On September 9, 2019, MDHHS inspectors observed B&B Glass workers leaving unit 401 with tools and equipment covered with renovation waste, debris, and dust.

68. MIG East's failure to use precautions at unit 401 to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, were free of dust and debris before leaving the work area during the renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(i)(E), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Count 6 to 7 – Failure to Contain the Waste from Renovation**

69. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

70. On September 9, 2019, in occupied unit 401, debris and dust were released to areas away from the renovation area.

71. On August 11, 2020, MDHHS inspectors observed that debris and dust was released to areas away from the renovation area into the 14th floor hallway.

72. MIG East's failure on September 9, 2019 and August 11, 2020 to contain the waste from the renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal during the renovations constitutes two violations of 40 C.F.R. § 745.85(a)(4)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

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**Count 8 – Failure to Ensure Waste Collected from Renovation Activities was Stored Under Containment**

73. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

74. On September 9, 2019, an open waste container in unit 401 was not covered after workers left the unit.

75. MIG East’s failure to store all waste collected from the renovation activities at unit 401 at the conclusion of each work day and at the conclusion of the renovation in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris during the renovation constitutes a violation of 40 C.F.R.

§ 745.85(a)(4)(ii), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Counts 9 to 10 – Failure to Establish and Maintain All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E**

76. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

77. For the renovations described in Paragraph 53, MIG East failed to establish and maintain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of each renovation, including occupied and vacant units.

78. For the renovations described in Paragraph 53, MIG East failed to establish and maintain the following records:

- a. Documentation of compliance with the work practice standards in 40 C.F.R. § 745.85,
- b. Documentation that a certified renovator was assigned to the project,

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- c. Documentation that the certified renovator provided on-the-job training for workers used on the project,
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and
- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

79. MIG East's failure to establish and maintain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of the renovations described in Paragraph 53 in occupied and vacant units constitutes two violations of 40 C.F.R. § 745.87(b), and 15 U.S.C. § 2689.

**Counts 11 to 25 – Failure to Ensure all Individuals are a Certified Renovator or Trained by a Certified Renovator to the Renovation Project**

80. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

81. MIG East did not provide records to show that it ensured 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 for the renovations performed in units 201, 202, 401, 402, 403, 601, 603, 702, 802, 803, 1001, 1102, 1202, 1302, and 1401.

82. MIG East's failure 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 to the renovations of the 15 residential units described in Paragraph 53 and 81 constitutes 15 violations of 40 C.F.R. § 745.89(d)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Counts 26 to 40 – Failure to Assign a Certified Renovator to the Renovation Project**

83. Paragraphs 1 through 55 of this CAFO are herein incorporated by reference.

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84. MIG East failed to ensure a certified renovator was on-site to perform the renovation activities or train workers to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, during the renovation for the renovations performed in units 201, 202, 401, 402, 403, 601, 603, 702, 802, 803, 1001, 1102, 1202, 1302, and 1401.

85. MIG East's failure to ensure a certified renovator was on-site to perform the renovation activities or train workers to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, during the renovations of the 15 residential units, described in Paragraph 53 and 84, constitutes 15 violations of 40 C.F.R. § 745.89(d)(2), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

#### **Civil Penalty**

86. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), EPA determined that an appropriate civil penalty to settle this action is \$645,356. In determining the penalty amount, EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to MIG East, 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.

87. Subject to the Bankruptcy Court's approval of MIG East's entry into this CAFO, EPA shall have an allowed general unsecured claim in MIG East's Bankruptcy Case in the amount of \$645,356, which MIG East shall pay in accordance with the terms for payment of allowed general unsecured claims under a confirmed plan or reorganization in the Bankruptcy Case.

88. EPA's allowed general unsecured claim shall receive the same treatment under the Plan, without discrimination, as all other allowed general unsecured claims, with all attendant rights provided by the Bankruptcy Code and other applicable law. In no event shall EPA's



allowed general unsecured claim be subordinated to any other claims pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims.

89. The civil penalty shall be paid in accordance with the confirmed plan by an on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option and enter “SFO 1.1” in the search field. Open the form and complete the required fields.

90. MIG East must send a notice of payment that states its name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
[R5hearingclerk@epa.gov](mailto:R5hearingclerk@epa.gov)

Christina Saldivar (ECP-17J)  
[saldivar.christina@epa.gov](mailto:saldivar.christina@epa.gov)

Nora Wells (C-14J)  
[wells.nora@epa.gov](mailto:wells.nora@epa.gov)

91. This civil penalty is not deductible for federal tax purposes.

92. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). In order to provide EPA with sufficient

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information to enable it to fulfill these obligations, EPA herein requires, and MIG East herein agrees, that:

- a. MIG East certifies that it has completed an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”);
- b. MIG East certifies that its completed IRS Form W-9 includes its correct TIN or that it has applied and is waiting for issuance of a TIN;
- c. MIG East shall email its completed Form W-9 to Milton Wise at EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that MIG East has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, MIG East shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of its receipt of a TIN issued by the IRS.

#### **General Provisions**

93. This CAFO shall be subject to approval of the Bankruptcy Court. MIG East shall promptly seek approval of this CAFO under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

94. Filing of this CAFO in the Bankruptcy Court shall be deemed to satisfy any requirement for the United States on behalf of EPA to file in the Bankruptcy Case any claim, request, or demand for the distributions and payments provided for herein.

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95. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: wells.nora@epa.gov (for EPA), and aberrysantoro@maxwelldunlaw.com (for MIG East). MIG East understands that the CAFO will become publicly available upon filing.

96. MIG East's full compliance with this CAFO shall only resolve its liability for federal civil penalties for the violations alleged in the CAFO.

97. 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.

98. This CAFO does not affect MIG East's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, and local laws.

99. MIG East certifies that it is complying with TSCA and 40 C.F.R. Part 745.

100. This CAFO constitutes a "prior such violation" as that term is used in 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 to determine MIG East's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

101. This CAFO applies to, is binding upon, shall inure to the benefit of, and shall, as applicable, be enforceable by the signatories hereto, their legal successors and assigns, MIG East, as debtor in possession, and any reorganized debtor.

102. 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.

103. Each party agrees to bear its own costs and attorney's fees in this action.

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

TP >

105. This CAFO has been reviewed and approved by the Regional Judicial Officer; however, the effective date of this CAFO shall be the date on which EPA files it with the Regional Hearing Clerk, which will not occur unless and until the Bankruptcy Court approves MIG East's entry into the CAFO. Following the Bankruptcy Court's final approval, EPA shall have the authority to file this CAFO with the Regional Hearing Clerk.

TP >

**Consent Agreement and Final Order  
In the Matter of: MIG East, LLC d/b/a MIG Construction  
Docket No. TSCA-05-2024-0011**

**MIG East, LLC d/b/a MIG Construction, Respondent**

04 / 09 / 2024

\_\_\_\_\_  
Date



\_\_\_\_\_  
[Principal] Paul Jenkins  
[Principal Title] Manager  
MIG East, LLC d/b/a  
MIG Construction

**Consent Agreement and Final Order  
In the Matter of: MIG East, LLC d/b/a MIG Construction  
Docket No. TSCA-05-2024-0011**

**United States Environmental Protection Agency**

**MICHAEL  
HARRIS**

Digitally signed by MICHAEL  
HARRIS  
Date: 2024.04.10 12:18:07  
-05'00'

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order**  
**In the Matter of: MIG East, LLC d/b/a MIG Construction**  
**Docket No. TSCA-05-2024-0011**

**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.

**ANN COYLE** Digitally signed by ANN COYLE  
Date: 2024.04.11 14:30:44  
-05'00'

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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

<b>Title</b>	Alex Berry-Santoro has sent you a document to review and...
<b>File name</b>	MIG East CAFO (final).pdf
<b>Document ID</b>	cdd152ea6ae84ad2eb46832385b00315a597a0d3
<b>Audit trail date format</b>	MM / DD / YYYY
<b>Status</b>	<span style="color: green;">●</span> Signed

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## Document History



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**04 / 09 / 2024**

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Sent for signature to Jenkins, Jr, Paul PJ (pj@migconstruction.com) from pj@migconstruction.com  
IP: 99.7.74.55



VIEWED

**04 / 09 / 2024**

13:59:11 UTC

Viewed by Jenkins, Jr, Paul PJ (pj@migconstruction.com)  
IP: 107.122.241.3



SIGNED

**04 / 09 / 2024**

14:02:27 UTC

Signed by Jenkins, Jr, Paul PJ (pj@migconstruction.com)  
IP: 107.122.241.3



COMPLETED

**04 / 09 / 2024**

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The document has been completed.