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U.S.EPA - Region 09

10 UNITED STATES  
11 ENVIRONMENTAL PROTECTION AGENCY  
12 REGION 9

13 **In the Matter of:**

14 **Holland & Harley Construction, Inc.**

15 **Respondent.**

Docket No. TSCA-09-2017- 0008

**CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 AND 22.18**

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency ("EPA"), Region 9, and Holland &  
18 Harley Construction, Inc. ("Respondent") agree to settle this matter and consent to the entry of  
19 this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and  
20 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 **I. AUTHORITY, JURISDICTION AND PARTIES**

22 1. This a civil administrative penalty action brought against Respondent pursuant to Section  
23 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of  
24 Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Section 402 of TSCA, 15  
25 U.S.C. § 2682, and its implementing rules issued at 40 C.F.R. Part 745, Subpart E.

26 2. Complainant is the Director of the Enforcement Division, EPA, Region 9, who has been

27 In the Matter of: Holland & Harley Construction, Inc.  
28 Consent Agreement and Final Order 1

1 duly delegated the authority to bring and settle this action under TSCA.

2 3. Respondent, a California corporation located in Berkeley, California, is a residential  
3 construction contractor.

4  
5 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

6 4. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.  
7 Part 745, Subpart E sets forth requirements for certification of individuals and firms engaged in  
8 lead-based paint activities and work practice standards for renovation, repair and painting  
9 activities in target housing.

10  
11 5. "Target housing" means any housing constructed prior to 1978, except housing for the  
12 elderly or persons with disabilities (unless any child who is less than six years of age resides or is  
13 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15  
14 U.S.C. § 2681.

15  
16 6. "Person" means any natural or judicial person including any individual, corporation,  
17 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any  
18 interstate body; and any department, agency, or instrumentality of the Federal Government. 40  
19 C.F.R. § 745.83.

20  
21 7. "Firm" means a company, partnership, corporation, sole proprietorship, or individual  
22 doing business, association, or other business entity; a Federal, State, Tribal, or local government  
23 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

24  
25 8. "Renovation" means the modification of any existing structure, or portion thereof, that  
26 results in the disturbance of painted surfaces, unless that activity is part of an abatement as  
27 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the

1 removal, modification or repair of painted surfaces or painted components (e.g., modification of  
2 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,  
3 scraping, or other such activities that may generate paint dust); the removal of building  
4 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting  
5 holes in painted surfaces to install blown-in insulation or to gain access to attics planning  
6 thresholds to install weatherstripping), and interim controls that disturb painted surfaces....The  
7 term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.  
8

9 9. "Painted surface" means a component surface covered in whole or in part with paint or  
10 other surface coatings. 40 C.F.R. § 745.83.  
11

12 10. "Renovator" means any individual who either performs or directs workers who perform  
13 renovations. A certified renovator is a renovator who has successfully completed a renovator  
14 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.  
15

16 11. Firms must post signs clearly defining the work area and warning occupants and other  
17 persons not involved in renovation activities to remain outside of the work area. These signs  
18 must be posted before beginning the renovation and remain in place until the renovation and the  
19 post-renovation cleaning have been completed. 40 C.F.R. § 745.85(a)(1).  
20

21 12. After the renovation has been completed, the firm must clean the work area until no dust,  
22 debris or residue remains. The firm must collect all paint chips and debris and, without  
23 dispersing any of it, seal this material in a heavy-duty bag. 40 C.F.R. § 745.85(a)(5)(i)(A).  
24

25 13. Firms performing renovations must ensure that all individuals performing renovation  
26 activities on behalf of the firm are either certified renovators or have been trained by a certified  
27 renovator in accordance with § 745.90. 40 C.F.R. § 745.89(d)(1).  
28

1 14. Firms performing renovations must ensure that a certified renovator is assigned to each  
2 renovation performed by the firm and discharges all of the certified renovator responsibilities  
3 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).  
4

5 15. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation  
6 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation  
7 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed  
8 \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred  
9 after January 12, 2009 but before November 2, 2015.  
10

### 11 **III. ALLEGATIONS**

12 16. Respondent is a "person," as that term is defined at 40 C.F.R. § 745.83.

13 17. At all times relevant to this CAFO, Respondent was a "firm," as that term is defined at 40  
14 C.F.R. § 745.83.

15 18. At all times relevant to this CAFO, the residential property located at 1672 Tacoma  
16 Street, in Berkeley, California 94707 ("Target Housing") was "target housing," as that term is  
17 defined at Section 401 of TSCA, 15 U.S.C. § 2681.  
18

19 19. Within the period of July 18, 2013, to January 10, 2014, Respondent performed one or  
20 more renovations ("Renovations") as that term is defined at 40 C.F.R. § 745.83, for  
21 compensation at the residential property located at the Target Housing.  
22

#### 23 FIRST CLAIM

24 20. Paragraphs 1-19 of this CAFO are realleged and are incorporated herein by reference.

25 21. During the Renovations, Respondent failed to post at least one sign clearly defining the  
26 work area and warning occupants and other persons not involved in renovation activities to  
27

1 remain outside of the work area.

2 22. Respondent's failure during the Renovations to post at least one sign clearly defining the  
3 work area and warning occupants and other persons not involved in renovation activities to  
4 remain outside of the work area constitutes a violation of Section 409 of TSCA, 15 U.S.C.  
5 § 2689, and 40 C.F.R. § 745.85(a)(1).  
6

7 SECOND CLAIM

8 23. Paragraphs 1-22 of this CAFO are realleged and are incorporated herein by reference.

9 24. Respondent failed to clean the work area until no dust, debris or residue remains, and  
10 failed to collect all paint chips and debris and, without dispersing any of it, seal this material in a  
11 heavy-duty bag, after one or more Renovations.  
12

13 25. Respondent's failure to clean the work area until no dust, debris or residue remains, and  
14 failed to collect all paint chips and debris and, without dispersing any of it, seal this material in a  
15 heavy-duty bag, after one or more Renovations, constitutes a violation of Section 409 of TSCA,  
16 15 U.S.C. § 2689, and 40 C.F.R. § 745.85(a)(5)(i)(A).  
17

18 THIRD CLAIM

19 26. Paragraphs 1-25 of this CAFO are realleged and are incorporated herein by reference.

20 27. Respondent failed to ensure that all individuals performing the Renovations on behalf of  
21 Respondent are either certified renovators or have been trained by a certified renovator in  
22 accordance with § 745.90.  
23

24 28. Respondent's failure to ensure that all individuals performing the Renovations on behalf  
25 of Respondent are either certified renovators or have been trained by a certified renovator in  
26  
27

1 accordance with § 745.90 is a violation Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.  
2 § 745.89(d)(1).

3  
4 FOURTH CLAIM

5 29. Paragraphs 1-28 of this CAFO are realleged and are incorporated herein by reference.

6 30. Respondent did not ensure that a certified renovator discharged all of the certified  
7 renovator responsibilities identified in § 745.90 for the Renovations performed at the Target  
8 Housing.

9 31. Respondent's failure to ensure that a certified renovator discharged all of the certified  
10 renovator responsibilities identified in § 745.90 for the Renovations performed at the Target  
11 Housing constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.  
12 § 745.89(d)(2).

13  
14 **IV. RESPONDENT'S ADMISSIONS**

15 32. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
16 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
17 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III  
18 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil  
19 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the  
20 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed  
21 Final Order contained in this CAFO.  
22  
23

24 **V. CIVIL ADMINISTRATIVE PENALTY**

1 33. Respondent agrees to the assessment of a penalty in the amount of FOURTEEN  
2 THOUSAND, TWO HUNDRED TEN DOLLARS (\$14,210) as final settlement of the civil  
3 claims against Respondent arising under TSCA as alleged in Section III of this CAFO.  
4

5 34. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective  
6 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to  
7 "Treasurer, United States of America," or paid by one of the other methods listed below and sent  
8 as follows:

9 Regular Mail:

10 U.S. Environmental Protection Agency  
11 Fines and Penalties  
12 Cincinnati Finance Center  
13 PO Box 979077  
14 St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the  
17 following information:

18 Federal Reserve Bank of New York  
19 ABA = 021030004  
20 Account = 68010727  
21 SWIFT address = FRNYUS33  
22 33 Liberty Street  
23 New York, NY 10045  
24 Field Tag 4200 of the Fedwire message should read "D 68010727  
25 Environmental Protection Agency"

26 Overnight Mail:

27 U.S. Bank  
28 1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver ABA = 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking

In the Matter of: Holland & Harley Construction, Inc.  
Consent Agreement and Final Order 7

1 Physical location of US Treasury Facility  
2 5700 Rivertech Court  
3 Riverdale, MD 20737  
4 Remittance Express (REX) 1-866-234-5681

4 On Line Payment:

5 This payment option can be accessed from the information below:

6 www.pay.gov

7 Enter "sfo1.1" in the search field

8 Open form and complete required fields

9 If clarification regarding a particular method of payment remittance is needed, contact the EPA  
10 Cincinnati Finance Center at 513-487-2091.

11 Concurrently, a copy of the check or notification that the payment has been made by one of the  
12 other methods listed above, including proof of the date payment was made, shall be sent with  
13 a transmittal letter indicating Respondent's name, the case title, and the docket number to the  
14 following addressees:

15 Regional Hearing Clerk  
16 Office of Regional Counsel (ORC-1)  
17 U.S. Environmental Protection Agency, Region 9  
18 75 Hawthorne Street  
19 San Francisco, California 94105

20 Lynn Kuo  
21 Waste & Chemical Section (ENF-2-2)  
22 Enforcement Division  
23 U.S. Environmental Protection Agency, Region 9  
24 75 Hawthorne Street  
25 San Francisco, CA 94105

26 35. Payment of the above civil administrative penalty shall not be used by Respondent or any  
27 other person as a tax deduction from Respondent's federal, state, or local taxes.

28 36. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph  
33 by the deadline specified in Paragraph 34, then Respondent shall pay to EPA a stipulated  
penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue

1 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall  
2 become due and payable upon written request by EPA. In addition, failure to pay the civil  
3 administrative penalty by the deadline specified in Paragraph 34 may lead to any or all of the  
4 following actions:

5  
6 a. The debt being referred to a credit reporting agency, a collection agency, or to the  
7 Department of Justice for filing of a collection action in the appropriate United States District  
8 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,  
9 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.  
10

11 b. The debt being collected by administrative offset (i.e., the withholding of money payable  
12 by the United States to, or held by the United States for, a person to satisfy the debt the person  
13 owes the Government), which includes, but is not limited to, referral to the Internal Revenue  
14 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.  
15

16 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend  
17 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors  
18 or funds. 40 C.F.R. § 13.17.

19 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,  
20 penalties charges, and administrative costs will be assessed against the outstanding amount that  
21 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the  
22 deadline specified in Paragraph 34. Interest will be assessed at an annual rate that is equal to the  
23 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan  
24 account rate) as prescribed and published by the Secretary of the Treasury in the Federal  
25 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).  
26  
27

1 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).  
2 Administrative costs for handling and collecting Respondent's overdue debt will be based on  
3 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.  
4 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the  
5 Department of Justice, the Internal Revenue Service), that department or agency may  
6 assess its own administrative costs, in addition to EPA's administrative costs, for handling and  
7 collecting Respondent's overdue debt.  
8

## 9 **VI. RESPONDENT'S CERTIFICATION**

10 37. In executing this CAFO, Respondent certifies that it is now fully in compliance with the  
11 federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.  
12

## 13 **VII. RETENTION OF RIGHTS**

14 38. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability  
15 for federal civil penalties for the violations and facts specifically alleged in Section III of this  
16 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability  
17 for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
18 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal  
19 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
20 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to  
21 address any violation of this CAFO or any violation not specifically alleged in Section III of this  
22 CAFO.  
23  
24

25 39. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to  
26 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and  
27

1 permits.

2 **VIII. ATTORNEYS' FEES AND COSTS**

3 40. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this  
4 proceeding.  
5

6 **IX. EFFECTIVE DATE**

7 41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective  
8 on the date that the final order contained in this CAFO, having been approved and issued by  
9 either the Regional Judicial Officer or Regional Administrator, is filed.  
10

11 **X. BINDING EFFECT**

12 42. The undersigned representative of Complainant and the undersigned representative of  
13 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
14 of this CAFO and to bind the party he or she represents to this CAFO.  
15

16 43. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
17 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
18 and assigns.

19 //

20 //

1 FOR RESPONDENT, HOLLAND & HARLEY CONSTRUCTION, INC.

2  
3 May 25, 2017  
4 DATE

George J. Harley  
Name  
Title  
Holland & Harley Construction, Inc.

6  
7 FOR COMPLAINANT:

8  
9 8-2-17  
10 DATE

Clair Mumbadere  
for Kathleen H. Johnson  
Director, Enforcement Division  
U.S. Environmental Protection Agency,  
Region 9

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In the Matter of: Holland & Harley Construction, Inc.  
Consent Agreement and Final Order 12

1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2017-<sup>0008</sup>) be

4 entered, and that Respondent shall pay a civil administrative penalty in the amount of

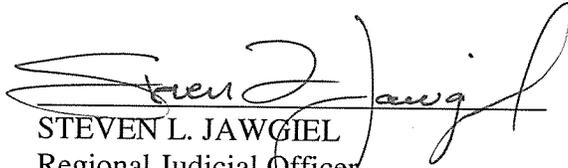
5 FOURTEEN THOUSAND, TWO HUNDRED AND TEN DOLLARS (\$14,210) and comply

6 with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and

7 Final Order shall become effective upon filing.

8  
9  
10 08/07/17

11 DATE

12   
13 STEVEN L. JAWGIEL  
14 Regional Judicial Officer  
15 U.S. Environmental Protection Agency,  
16 Region 9

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28 In the Matter of: Holland & Harley Construction, Inc.  
Consent Agreement and Final Order 13

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Holland and Harley Construction, TSCA-09-2017-0008, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk (file date August 8, 2017), and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:  
(Certified w/Return Receipt)

Respondent -

Chip Harley  
Holland and Harley Construction Inc.  
702-F Harrison  
Berkeley, CA 94710

HAND DELIVERED:

Complainant -

Brian P. Riedel, Esq.  
Office of Regional Counsel  
ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, Calif., this 8th day of August, 2017.

  
Steven Armsey  
Regional Hearing Clerk  
EPA, Region 9