

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

In the Matter of:)
)
FRESH COATS PAINTING &)
REMODELING, LLC)
5 Harvey Avenue)
Waterford, Connecticut 06385)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

EPA Docket No.
TSCA-01-2021-0015

**CONSENT AGREEMENT
AND
FINAL ORDER**

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 Respondent, Fresh Coats Painting & Remodeling, LLC, violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA set forth at 40 C.F.R. Part 745, Subpart E (“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.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

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 TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a). The regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], 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 [*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92], 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 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.

5. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act 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). *See* 40 C.F.R. § 745.103.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.”

11. 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.

12. 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.

13. 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. 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).

14. 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.

15. 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.

16. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Adjustment Rule set forth at 40 C.F.R. Part 19 ("Penalty Inflation Rule") and the Federal Civil Penalties Inflation Adjustment Improvement Act, each such TSCA violation that occurred after November 2, 2015, 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. 1753 (Jan. 13, 2020).

II. GENERAL ALLEGATIONS

17. Respondent, Fresh Coats Painting & Remodeling, LLC ("Fresh Coats Painting & Remodeling"), is a Connecticut limited liability company registered with the State of Connecticut in or around 2018, with its principal office located at 5 Harvey Avenue, Waterford, Connecticut.

18. Respondent provides residential repair, renovation, and building services in and around southeastern Connecticut. Respondent operates under the direction of Douglas Wiech, Fresh Coats Painting & Remodeling's owner.

19. On or about August 28, 2019, a duly authorized EPA inspector conducted a

compliance inspection (“Inspection”) of the renovation work Respondent performed at a single-family residential property located at 188 Gardner Avenue, New London, Connecticut (“188 Gardner Avenue”) constructed in 1929. The renovation entailed sanding and scraping the existing cracked and loose paint on the exterior of the residence, and painting the exterior. At the time of the Inspection, paint chips were visible along the base of the building foundation and in certain areas of soil near the foundation.

20. During the Inspection, EPA sought records and other information relating to Respondent’s compliance with RRP Rule requirements.

21. At all times relevant to the allegations in this CAFO, Respondent performed renovation activities for compensation, which constituted a “renovation” within the meaning of 40 C.F.R. § 745.83, at 188 Gardner Avenue.

22. At all times relevant to the violations alleged in this CAFO, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

23. The residence located at 188 Gardner Avenue was built in 1929, and therefore, it is target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the property does not satisfy the requirements for an exemption under the provisions of TSCA (including 15 U.S.C. § 2681(17)) or the RRP Rule (including 40 C.F.R. § 745.82).

III. VIOLATIONS

24. 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.

25. Each of the five 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. § 745.87, 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 Obtain EPA Certification

26. Paragraphs 1 through 25, above, are incorporated by reference as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations in target housing without certification from EPA under 40 C.F.R. § 745.89, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c). Pursuant to 40 C.F.R. § 745.89(a), firms performing renovations at target housing for compensation must apply for EPA certification to perform renovations or dust sampling.

28. Respondent failed to obtain EPA RRP Rule firm certification prior to initiating the renovation described in paragraph 19. Respondent's failure to obtain EPA firm certification prior to performing the renovation at 188 Gardner Avenue constituted a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

COUNT TWO

Failure to Assign Certified Renovator

29. Paragraphs 1 through 28, above, are incorporated by reference as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations in target housing must assign a certified renovator to each renovation performed by the firm who discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

31. Respondent failed to assign a certified renovator to the renovation described in

paragraph 19. Respondent's failure to assign a certified renovator to this renovation to carry out all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 constituted a violation of 40 C.F.R. § 745.89(d)(2).

COUNT THREE

Failure to Provide EPA-Approved Lead Hazard Pamphlet

32. Paragraphs 1 through 31, above, are incorporated by reference as if fully set forth herein.

33. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations in target housing must provide the owner of the target housing with an EPA-approved lead hazard information pamphlet no more than 60 days before beginning the renovation activities.

34. Respondent failed to provide the owner of the target housing described in paragraph 19 with an EPA-approved lead hazard information pamphlet prior to the renovation. Respondent's failure to provide the EPA-approved lead hazard information pamphlet to the owner of target housing prior to the renovation constituted a violation of 40 C.F.R. § 745.84(a)(1).

COUNT FOUR

Failure to Properly Contain Exterior Work by Covering Ground with Impermeable Material

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

36. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations 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)(ii)(C), firms performing exterior renovations to target housing 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.

37. During the renovation described in paragraph 19, Respondent failed to ensure that the ground was covered with plastic sheeting or other disposable impermeable material. Respondent's failure to ensure that the ground was covered with plastic sheeting or other impermeable material during a renovation of target housing constituted a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

COUNT FIVE

Failure to Retain Required Records

38. Paragraphs 1 through 37, above, are incorporated by reference as if fully set forth herein.

39. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation. Pursuant to 40 C.F.R. § 745.86(b)(2) and (6), records that must be retained shall include, where applicable, signed and dated acknowledgments of receipt as described in 40 C.F.R. § 745.84(a)(2)(i) and documentation of compliance with the requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project and that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

40. Respondent failed to retain the required records necessary to demonstrate compliance with 40 C.F.R. § 745.86(a) as described in paragraph 39 with respect to the renovation described in paragraph 19. Respondent's failure to retain required records constituted

a violation of 40 C.F.R. § 745.86(a).

IV. TERMS OF SETTLEMENT

41. The provisions of this CAFO shall apply to and be binding upon Respondent, its officers, successors and assigns.

42. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents for purposes of settlement to the terms of this CAFO.

43. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO and waives its right to appeal the Final Order accompanying this Consent Agreement.

44. Respondent agrees to operate its business in compliance with 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.

45. Respondent has 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).

46. Respondent agrees to assign a certified renovator to each renovation performed by Respondent in compliance with 40 C.F.R. § 745.89(d)(2).

47. Respondent agrees to 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).

48. Respondent agrees to cover the ground at target housing where it performs exterior renovations 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).

49. Respondent agrees to 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).

50. 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 **\$2,388**.

51. 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.

52. Respondent shall pay the penalty of **\$2,388** within 30 days of the effective date of this CAFO in the following manner: The payment shall be made using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and every payment shall reference “*In the Matter of: Fresh Coats Painting & Remodeling, LLC* Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action “Docket No. TSCA-01-2021-0015.” Within 24 hours of the penalty payment, proof of payment shall be sent by e-mail and first class mail or commercial delivery service, to Wanda I. Santiago, Regional Hearing Clerk, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-6), Boston, MA 02109-

3912, and Santiago.Wanda@epa.gov, and Kevin P. Pechulis, Senior Enforcement Counsel, U.S. EPA, Region 1, 5 Post Office Square, Suite 100 (ORC 04-3), Boston, MA 02109-3912, and Pechulis.Kevin@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. TSCA-01-2021-0015”).

53. 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 Respondent’s violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent’s violation of any applicable provision of law.

54. 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, Respondent agrees 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.

55. This CAFO shall not relieve Respondent of its 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.

56. This CAFO constitutes a settlement by and between EPA and Respondent 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 Respondent. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

57. 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).

58. 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.

59. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following address: freshcoatspaintingct@gmail.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable

database. Complainant has provided Respondent 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.

60. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives 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.

61. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

For Respondent:

Douglas A.
Wiech

Digitally signed by Douglas A.
Wiech
Date: 2021.01.26 15:01:37
-05'00'

Douglas Wiech, Owner
Fresh Coats Painting & Remodeling, LLC

Date: _____

For Complainant:

Date: _____

James Chow, Deputy Director *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

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. Respondent Fresh Coats Painting & Remodeling, LLC is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

Sharon Wells
Acting Regional Judicial Officer
U.S. Environmental Protection Agency-Region 1

Date