

**FILED**

**Jul 09, 2024**

**9:40 am**

**U.S. EPA REGION 8  
HEARING CLERK**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

<p>IN THE MATTER OF:</p> <p>VareCo PM, LLC; Amen Corner, LLC, dba The Vareco; VareCo 195 Jackson, LLC; 2836 Wyandot II LLC; 11800 E Colfax OZB LLC; 1679-1695 Reed, LLC; VareCo 9700 W 51<sup>st</sup> Place, LLC;</p> <p>Respondents</p>	<p>Docket No. TSCA-08-2024-0005</p> <p><b>CONSENT AGREEMENT</b></p>
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**I. INTRODUCTION**

1. The parties to this Consent Agreement are the undersigned U.S. Environmental Protection Agency official (Complainant) and VareCo PM, LLC; Amen Corner, LLC dba The Vareco; VareCo 195 Jackson, LLC; 2836 Wyandot II LLC; 11800 E Colfax OZB LLC; 1679-1695 Reed, LLC; and VareCo 9700 W 51<sup>st</sup> Place, LLC (Respondents).
2. This Consent Agreement, upon approval by the appropriate EPA Regional Judicial Officer or Regional Administrator, will simultaneously commence and conclude an administrative penalty proceeding under sections 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 of Practice), as codified at 40 C.F.R. part 22.

**II. JURISDICTION**

3. The U.S. Environmental Protection Agency (EPA) has jurisdiction over this matter under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
4. This proceeding is subject to the Consolidated Rules of Practice.

### **III. GOVERNING LAW**

5. As directed by section 402(c) of TSCA, the EPA has promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
6. As described in more detail below, the RRP Rule requires that individuals performing renovations for compensation in target housing be properly trained, that renovators and firms performing renovations be certified, and that certain work practice standards be followed during renovations.
7. “Target housing” is defined in section 401(17) of TSCA, 15 U.S.C. § 2681, to mean any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).
8. “Renovation” is defined in 40 C.F.R. § 745.83 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 at 40 C.F.R. § 745.223.

### **Enforcement**

9. Failure to comply with any provision of the RRP Rule constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689. The EPA may assess a civil penalty of up to \$48,512 for each violation of section 15 or 409 of TSCA, and each day of violation constitutes a separate violation of section 15 or 400. 15 U.S.C. § 2615(a); 40 C.F.R. part 19; 88 Fed. Reg. 89309, 89312 (December 27, 2023).

### **IV. ALLEGATIONS OF FACT AND LAW**

The following allegations apply at all times relevant to this Consent Agreement:

10. Respondent VareCo PM, LLC is a Colorado limited liability company.
11. Respondent VareCo PM, LLC has conducted business in Colorado under various trade names, including “LivLavender” and “LivLavender Property Management.”
12. Respondent Amen Corner, LLC (Amen Corner) is a Colorado limited liability company.
13. Respondent Amen Corner has conducted business in Colorado under the trade name “The Vareco.”
14. Respondent VareCo 195 Jackson, LLC is a Colorado limited liability company.
15. Respondent 2836 Wyandot II LLC is a Colorado limited liability company.

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16. Respondent 11800 E Colfax OZB LLC is a Colorado limited liability company.
17. Respondent 11800 E Colfax OZB LLC has conducted business in Colorado under the trade name “Summit View Inn.”
18. Respondent 1679-1695 Reed, LLC is a Colorado limited liability company.
19. Respondent VareCo 9700 W 51<sup>st</sup> Place, LLC is a Delaware limited liability company.
20. Each Respondent’s principal place of business is 2243 Curtis St., Denver, Colorado, 80205.
21. Each Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, and as defined in 40 C.F.R. § 745.83.
22. Each Respondent is a “firm” as defined in 40 C.F.R. § 745.83.
23. Respondents VareCo PM, LLC, Amen Corner, and VareCo 195 Jackson, LLC have performed renovations at a multi-unit dwelling building at 195 Jackson Street, Denver, Colorado (Jackson Jobsite).
24. Respondents VareCo PM, LLC, Amen Corner, and 2836 Wyandot II LLC have performed renovations a multi-unit residential building at 2830 Wyandot Street, Denver, Colorado (2830 Wyandot Jobsite).
25. Respondents VareCo PM, LLC, Amen Corner, and 2836 Wyandot II LLC have performed renovations at a multi-unit residential building at 2836 Wyandot Street, Denver, Colorado (2836 Wyandot Jobsite).
26. Respondents VareCo PM, LLC, Amen Corner, and 11800 E Colfax OZB LLC have performed renovations at a motel being converted to a multi-unit dwelling building at 11800 E. Colfax Avenue, Aurora, Colorado (Colfax Jobsite).
27. Respondents VareCo PM, LLC, Amen Corner, and 1679-1695 Reed, LLC have performed renovations at a multi-unit dwelling building at 1679-1695 Reed Street, Lakewood, Colorado (Reed Jobsite).
28. Respondents VareCo PM, LLC, Amen Corner, and VareCo 9700 W 51<sup>st</sup> Place, LLC have performed renovations at a multi-unit dwelling building sometimes known as the Iris at 9700 W. 51<sup>st</sup> St., Wheat Ridge, Colorado (Iris Jobsite).
29. Each Jobsite referenced in paragraphs 23 through 28, above, is a residential property constructed prior to 1978 and is “target housing” as that term is defined in 15 U.S.C. § 2681(17).

## V. ALLEGED VIOLATIONS

The Complainant alleges the following violations.

### Count 1: Failure to Obtain Firm Certification

30. Firms that perform or offer to perform renovations on target housing are required to apply to the EPA for initial certification. 40 C.F.R. § 745.89(a).
31. Respondents failed to obtain initial certification from the EPA prior to performing the renovations on the Jobsites referenced in paragraphs 23 through 26, above.
32. Respondents' failure to obtain initial certification in connection with any of the Jobsites referenced in paragraphs 24 through 28, above, constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

### Counts 2 - 7: Failure to Assign Certified Renovator

33. Firms performing renovations on target housing must ensure that a certified renovator is assigned to each renovation performed by the firm and that the certified renovator discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2).
34. Respondents did not assign a certified renovator to renovations of the six Jobsites referenced in paragraphs 23 through 28, above, as required by 40 C.F.R. § 745.89(d)(2).
35. Respondents' failures to assign a certified renovator to any of the renovations for the six Jobsites referenced in paragraphs 23 through 28, above, constitute violations of 40 C.F.R. § 745.89(d)(2) and section 409 of TSCA, 15 U.S.C. § 2689.

### Count 8: Failure to Maintain Records

36. Firms performing renovations on target housing are required to retain and, if requested, make available to the EPA all records necessary to demonstrate compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.86, as required by 40 C.F.R. § 745.87.
37. Respondents failed to retain or produce, upon request by the EPA, all records necessary to demonstrate compliance with the RRP Rule for the Jobsites referenced in paragraphs 23 through 28, above, in violation of 40 C.F.R. §§ 745.86 and 745.87.
38. Respondents' failure to retain or produce the required records for the Jobsites referenced in paragraphs 23 through 28, above, constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

**Counts 9-11: Failure to Obtain Written Acknowledgment of Renovate Right Pamphlet**

39. Firms performing renovations of target housing not occupied by the owner are required (1) to provide adult occupants with the EPA pamphlet titled “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools” (Renovate Right pamphlet) no more than 60 days before beginning renovation activities and (2) to obtain a written acknowledgement that the occupant has received the pamphlet, to certify in writing that the pamphlet has been delivered to the dwelling and the firm has been unsuccessful in obtaining a written acknowledgement, or obtain a certificate of mailing at least seven days prior to the renovation, pursuant to 40 C.F.R. § 745.84, as required by 40 C.F.R. § 745.89(d)(4).
40. Respondents failed to obtain a written acknowledgement that the occupants of the three Jobsites referenced in paragraphs 23, 27, and 28, above, had received the Renovate Right pamphlet, to certify in writing that the pamphlet had been delivered to them, or to obtain or a certificate of mailing at least seven days prior to the renovation of each such Jobsite, in violation of 40 C.F.R. §§ 745.84 and 745.89(d)(4).
41. Respondents’ failures to obtain written acknowledgment or a certificate of mailing of the Renovate Right pamphlet, or to certify having delivered the pamphlet but having been unsuccessful in obtaining a written acknowledgement for the Jobsites referenced in paragraphs 23, 27, and 28, above, constitute violations of section 409 of TSCA, 15 U.S.C. § 2689.

**VI. TERMS OF CONSENT AGREEMENT**

42. For the purpose of this proceeding, Respondents:
  - a. admit the jurisdictional allegations in section II of this Consent Agreement;
  - b. neither admit nor deny the factual allegations in sections IV and V of this Consent Agreement;
  - c. consent to the assessment of a civil penalty as stated below;
  - d. acknowledge this Consent Agreement constitutes an enforcement action for purposes of considering the compliance history of each Respondent and the undersigned signatory for each Respondent in any subsequent enforcement action; and
  - e. waive any right to contest the allegations in this Consent Agreement and to appeal any final order approving this Consent Agreement.

43. In determining the amount of the penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondents, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
44. Based on the allegations in sections IV and V above, and having considered the penalty assessment factors cited in paragraph 43, above, the Complainant has determined a civil penalty of \$125,000 (the Assessed Penalty) is appropriate to settle this proceeding.
45. Penalty Payment. Respondents agree to:
- a. pay the Assessed Penalty within 30 days after the date the final order approving this Consent Agreement is filed with the Regional Hearing Clerk (Filing Date).
  - b. pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, provided on the websites <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
  - c. indicate each and every payment is payable to the “Treasurer, United States of America” and include in each and every payment a reference to the docket number that appears on the final order approving this Consent Agreement;
  - d. within 24 hours after each payment, email proof of payment to (1) Britta Copt, Environmental Protection Specialist, EPA Region 8, at [copt.britta@epa.gov](mailto:copt.britta@epa.gov); (2) the Regional Hearing Clerk for EPA Region 8 at [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov) (with an underscore between “R8” and “Hearing” and between “Hearing” and “Clerk”), and (3) U.S. Environmental Protection Agency, Cincinnati Finance Center, at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov) (with an underscore between “CINWD” and “AcctsReceivable”). “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 payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order approving this Consent Agreement.
46. Interest, Charges, and Penalties on Late Payment. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. The rate of interest is the Internal Revenue Service (IRS) standard underpayment rate.
  - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
  - c. Late Payment Penalty. A penalty of 6% per annum will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, and other charges, that remain delinquent more than 90 days.
47. In addition to the amounts described in the prior paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions, including, but not limited to, the following.
- a. request the Attorney General to bring a civil action under section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), in an appropriate district court to recover the full remaining amount of the debt plus interest (and in any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review);
  - b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13 and 13.14;
  - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, under 40 C.F.R. part 13, subparts C and H; and
  - d. suspend or revoke any Respondent's licenses or other privileges or suspend or disqualify that Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds under 40 C.F.R. § 13.17.
48. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondents will not deduct penalties paid under this Consent Agreement for federal tax purposes.
49. The undersigned representative signing this Consent Agreement for each Respondent certifies s/he has authority to bind that Respondent to this Consent Agreement.

50. This Consent Agreement applies to Respondents and their officers, directors, employees, agents, trustees, and authorized representatives and, for the penalty payment obligation in paragraph 45, above, also to their successors and assigns. Respondents must give written notice and a copy of this Consent Agreement to any successors in interest prior to any transfer of any interest in any Jobsite referenced above if the transfer occurs prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of any Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter that Respondent's responsibilities under this Consent Agreement.
51. Respondents certify that for each project for which they or any affiliated entity is performing or will perform renovation in the future will comply with the RRP Rule. For purposes of this paragraph, an "affiliated entity" includes any business entity (1) owned at least in part by any Respondent; (2) for which Terrance Doyle is an employee, member, officer, or director; and (3) any entity with which any Respondent or any affiliated entity enters into a contract for performing renovation at target housing.
52. Except as qualified by paragraph 46, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

53. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order approving this Consent Agreement resolves Respondents' liability only for federal civil penalties for the violations specifically alleged above.
54. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
55. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against any Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
56. If and to the extent the EPA finds, after entering into this Consent Agreement, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.



57. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (entitled “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.” The 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). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, the EPA requires, and Respondents agree, that:
- a. Each Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. Each Respondent shall certify on its completed IRS Form W-9 that this form includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
  - c. Each Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [Chalifoux.Jessica@epa.gov](mailto:Chalifoux.Jessica@epa.gov), no later the due date under paragraph 45, above, for payment of the penalty, and the EPA recommends encrypting IRS Form W-9 in email correspondence; and
  - d. In the event that any Respondent has certified in its completed IRS Form W-9 that it he does not yet have a TIN but has applied for a TIN, that Respondent shall provide the EPA’s Cincinnati Finance Center with that Respondent’s TIN, via email, within five days after Respondent’s receipt of a TIN issued by the IRS.

### **VIII. SERVICE OF FINAL ORDER**

58. The contact information for the individuals authorized to receive service for each party are:

For Complainant:	Margaret J. (Peggy) Livingston, R8-ORC-LE-R Region 8, U.S. Environmental Protection Agency 1595 Wynkoop St. Denver, Colorado 80202 303-312-6858 <a href="mailto:livingston.peggy@epa.gov">livingston.peggy@epa.gov</a>
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For each Respondent: Adam DeVoe, Attorney  
1001 Bannock St., Suite 310  
Denver, CO 80204  
303-550-9517  
adam@devoe-law.com

59. The parties consent to service of the final order approving this Consent Agreement at the respective email addresses in paragraph 58, above.


**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Cobb, Supervisor  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance  
Division  
**Complainant**

**VARECO PM, LLC; VARECO 195 Jackson,  
LLC; 2836 WYANDOT II LLC; AMEN  
CORNER, LLC dba The VareCo; 11800 E  
COLFAX OZB LLC; 1679-1695 REED, LLC;  
VareCo 9700 W 51<sup>st</sup> PLACE, LLC;  
Respondents**

Date: 7-8-2024  
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By:   
\_\_\_\_\_  
Terrance Doyle, Manager