

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

In the Matter of:)
)
Robert Thibault)
36 Luck Street,)
Burlington, VT 05401)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

EPA Docket No.
TSCA-01-2021-0072

**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, Robert Thibault, violated Section 409 of TSCA, 15 U.S.C. § 2689, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L, as amended (collectively referred to herein as the “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.

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. Maintain up-to-date EPA certification status for the firm prior to performing renovations;
- ii. Ensure that all individuals performing renovation activities on behalf of the firm are certified renovators or have been trained by a certified renovator and,
- iii. Perform renovations in compliance with applicable work practice standards for any renovation, repair, and painting activities conducted.

See 40 C.F.R. §§ 745.81(a)(2)-(4), 745.89(b) & (d), and 745.85.

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.

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 December 23, 2020, is subject to a penalty of up to \$41,056 per day per violation. *See* 85 Fed. Reg. 83818 (December 23, 2020).

II. GENERAL ALLEGATIONS

17. Respondent, Robert Thibault (“Thibault”), is a contractor and sole proprietor whose principle place of business is located at 36 Luck Street, Burlington, VT. Respondent provides residential repair, renovation, and building services in and around the Burlington, VT area.

18. In June 2020, Respondent was performing an exterior renovation at a multi-family residential property located at 29 N. Union Street, Burlington, VT (the “Property”). The Property is owned and managed by Loomis Properties located in Burlington, VT (“Loomis”).

19. On August 12, 2020, EPA issued an Information Request Letter (“IRL”) to Loomis. The EPA Information Request Letter sought records and other information relating to Loomis’s and Respondent’s compliance with RRP Rule requirements.

20. On August 26, 2020, in response to EPA’s Information Request Letter, a representative of Loomis submitted information to EPA documenting the following: (1) the Property is a residential property constructed prior to 1978; (2) no child occupants were present at the Property while renovation work was performed by Respondent; (3) Respondent performed

exterior renovation work at the Property; and (4) Respondent's RRP Rule firm certificate was expired during the renovation work at the Property. EPA's Federal Lead-Based Paint Program ("FLPP") database records additionally documented that Respondent had been issued an EPA RRP Rule firm certificate on May 19, 2010, which expired on June 2, 2015.

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 the residential property located at 29 N. Union Street.

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 renovation at the Property disturbed more than 20 square feet of exterior painted surfaces, and did not constitute an emergency repair or renovation, as defined in 40 C.F.R. § 745.82(b).

24. The residential property located at 29 N. Union Street, was built in prior to 1978, 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

25. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent and Loomis during, or as a result of, EPA's investigation of the facts and circumstances underlying the violations.

26. Each of the four 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 of an EPA-certified firm to stop renovations or
dust sampling if it does not obtain recertification*

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

28. Pursuant to 40 C.F.R. 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for an exemption identified in § 745.82(a).

29. Pursuant to 40 C.F.R. § 745.89(a), a firm performing renovations at target housing for compensation must apply for EPA certification to perform renovations or dust sampling.

30. Pursuant to 40 C.F.R. § 745.89(b)(1)(iii), if a firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations for compensation at target housing or dust sampling until the firm is recertified anew pursuant to 40 CFR § 745.89(a).

31. Respondent was issued an EPA RRP Rule firm certificate on May 19, 2010, which expired on June 2, 2015. Respondent failed to recertify its firm certification prior to initiating the renovation described in paragraph 18, or stop renovations or dust sampling prior to recertification. Respondent's failure to recertify the EPA firm certification prior to performing the renovation at the Property constituted a violation of 40 C.F.R. § 745.89(b)(1)(iii).

COUNT TWO

Failure of a firm to ensure that all individuals performing renovation activities on behalf of the firm are certified renovators or have been trained by a certified renovator

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

33. Pursuant to 40 C.F.R. § 745.89(d)(1) firms performing renovations must ensure 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 § 745.90.

34. Respondent failed to ensure that all individuals performing renovation activities on behalf of the firm were certified renovators or have been trained by a certified renovator. Respondent's failure to ensure that all individuals performing renovation activities on behalf of the firm were certified renovators or have been trained by a certified renovator prior to performing the renovation described in paragraph 18 constituted a violation of 40 C.F.R. § 745.89(d)(1).

COUNT THREE

Failure to properly contain exterior work by covering ground with impermeable material before beginning the renovation

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.

37. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), before beginning the renovation, firms performing exterior renovations at 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.

38. Before beginning the renovation described in paragraph 18, 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 the renovation of target housing constituted a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

COUNT FOUR

Failure to close all doors and windows before beginning the renovation

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

40. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations at target housing must ensure that all renovations are performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

41. Pursuant to 40 C.F.R. § 745.85(a)(5)(ii)(A), before beginning the renovation, firms performing renovations must close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

42. Before beginning the renovation described in paragraph 18, Respondent failed to close all doors and windows within 20 feet of the renovation. Respondent's failure to close all doors and windows within 20 feet of the renovation constituted a violation of 40 C.F.R. §§

745.85(a)(2)(ii)(A) and 745.89(d)(3).

IV. TERMS OF SETTLEMENT

43. This CAFO shall apply to and be binding upon Respondent, its successors and assigns.

44. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that this CAFO states a claim upon which relief can 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.

45. Respondent hereby waives its right to 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.

46. Respondent certifies that he is operating his business in compliance with 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, and 40 C.F.R. Part 745, Subpart L.

47. Respondent certifies that he has obtained EPA firm recertification to perform renovations or dust sampling in compliance with 40 C.F.R. §745.89(b).

48. Respondent certifies that as of the effective date of this CAFO, all individuals performing renovation activities on behalf of the firm shall be certified renovators or trained by a certified renovator prior to performing the renovation in compliance with 40 C.F.R. § 745.

89(d)(1).

49. Respondent certifies that as of the effective date of this CAFO, before beginning a

renovation, Respondent will cover the ground at target housing where he 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).

50. Respondent certifies that as of the effective date of this CAFO, before beginning a renovation, Respondent will close all doors and windows within 20 feet of the renovation, in compliance with 40 C.F.R. §§ 745.85(a)(2)(ii)(A) and 745.89(d)(3).

51. 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 nineteen thousand, four hundred seventy-seven dollars (\$19,477).

52. 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.

53. Respondent shall pay the penalty of nineteen thousand, four hundred seventy-seven dollars (\$19,477) within 30 days of the effective date of this CAFO in the following manner: The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of Robert Thibault; Consent Agreement and Final Order, EPA Region 1,*” Respondent’s name and address, and the EPA Docket Number of this action (TSCA-01-2021-0072), and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to (copy to Peter DeCambre may be sent by email):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-6
Boston, MA 02109-3912
santiago.wanda@epa.gov

and

Peter DeCambre, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-3

Boston, MA 02109-3912
decambre.peter@epa.gov

54. 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.

55. 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.

56. This CAFO shall not relieve Respondent of his 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.

57. 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.

58. 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).

59. 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.

60. The Parties agree that Respondent and EPA may execute this CAFO by electronic signature. To ensure the validity of these signatures and legal enforceability of this CAFO, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. The Respondent's signature will comply with the EPA Region 1 Regional Judicial Officer's (RJO) June 1, 2020 Amended Standard Operating Procedures for Filing and Service of Part 22 CAFOs/ESAs, Answers, Motions and Complaints During U.S. EPA Region 1's 2020 COVID-19 Response (Amended SOP), which will be provided to the Respondent by the EPA Case Attorney. The Respondent will deliver electronically signed documents by email to the EPA at decambre.peter@epa.gov. After EPA's receipt of the electronically signed CAFO, EPA may electronically sign the CAFO and file and serve copies of

the executed CAFO in accordance with the Amended SOP. After the CAFO is signed by all Parties, including the Regional Judicial Officer, the document will be date stamped and locked by the EPA Region 1 Regional Hearing Clerk to prevent any further alteration of the document. An electronically signed CAFO delivered by email or in hard copy shall be deemed an original document, which shall be stored and managed in accordance with Federal recordkeeping requirements. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the Parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

61. 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.

For Respondent:



Robert Thibault

Date: 5/28/21

For Complainant, U.S. EPA, Region 1:

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

Date: _____

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. The Respondent, Robert Thibault, is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1

Date