


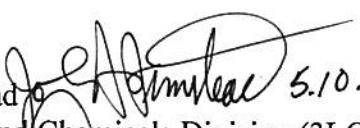
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

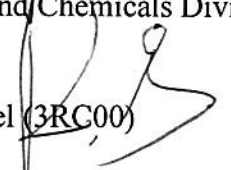
SUBJECT: IMO: Crocker & Little Properties, Inc.
U.S. EPA Docket No. TSCA-03-2018-0091
Consent Agreement/Final Order

DATE:

MAY 10 2018

TO: Joseph J. Lisa  5/16/2018
Regional Judicial Officer

FROM: John A. Armstead  5.10.18
Director, Land and Chemicals Division (3LC00)

Mary B. Coe  5/4/18
Regional Counsel (3RC00)

We recommend that you sign the attached Final Order which accompanies the attached fully executed Consent Agreement. Pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), the filing of this Consent Agreement and Final Order (“CAFO”) will simultaneously commence and conclude a proceeding against Crocker & Little Properties, Inc. (“Respondent”) for alleged violations of 40 C.F.R. Part 745, Subpart E – Residential Property Renovation, in connection with the renovation of certain pre-1978 housing in Frederick, Maryland.

The parties have negotiated and agreed to settle this matter for \$15,779. The penalty for the alleged violations was determined by considering the factors set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and in accordance with 40 C.F.R. Part 19 and EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, as revised, and EPA’s *Pilot Lead-Based Paint Graduated Penalty Approach*, as extended.

cc: Counsel for Respondent
Chris M. May, Esq.
Offutt, Horman, Burdette & May, PA
22 West 2nd Street
Frederick, MD 21701
cmmlawatt@netzero.net
301-662-8248
301-631-0956
301-663-8968 (fax)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN RE:)	
	)	DOCKET NO. TSCA-03-2018-0091
Crocker & Little Properties, Inc.)	
612 West Patrick Street)	
Frederick, MD 21701-4065	)	CONSENT AGREEMENT
)	
Respondent,)	
)	
600 West Patrick Street	)	Proceeding under Section 16(a) of
Frederick, MD 21701-4065	)	the Toxic Substances Control Act,
	)	15 U.S.C. § 2615(a)
Target Housing.)	

CONSENT AGREEMENT

U.S. EPA-REGION 3-RHC
FILED-17MAY2018am9:08

I. INTRODUCTION

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, Region III (“Complainant”), of the U.S. Environmental Protection Agency (“EPA”) and Crocker & Little Properties, Inc. (“Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act, as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (collectively, “TSCA”), 15 U.S.C. §§ 2615(a) and 2689, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, the filing of this CA will simultaneously commence and resolve EPA’s civil claims for Respondent’s violations alleged herein of regulations promulgated pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, codified at 40 C.F.R. Part 745, Subpart E - Residential Housing Renovation.

II. GENERAL PROVISIONS

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CA and the attached Final Order (“FO”), hereinafter collectively referred to as the “CAFO.”

4. Except as provided in paragraph 3 herein Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CA.

5. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this CA, the issuance of the attached Final Order, and the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
8. Each party to this CA shall bear its own costs and attorney's fees.
9. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 16 of TSCA, 40 C.F.R. 15 U.S.C. § 2615, and 40 C.F.R. §§ 22.1(a)(5), 22.4 and 745.87.
10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count 1 (Firm Certification)

11. 40 C.F.R. § 745.82(a) provides that the requirements of 40 C.F.R. 745 Subchapter E apply to all renovations performed for compensation in target housing, with certain exceptions inapplicable hereto.
12. 40 C.F.R. § 745.83 defines "person" as any natural or judicial person including, *inter alia*, any individual, corporation, partnership, or association.
13. 40 C.F.R. § 745.83 defines "firm" as, *inter alia*, a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.
14. 40 C.F.R. § 745.83 defines "renovation" as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, with certain exceptions inapplicable hereto.
15. Respondent is a Maryland corporation with a principle place of business located at 612 West Patrick Street, Frederick, Maryland, 21701-4065.
16. At all times relevant to the violations alleged herein, Respondent is and was a "corporation," a "person," and a "renovator" within the meaning of 40 C.F.R. § 745.83.

17. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
18. At all times relevant to the violations alleged herein, the housing located at 600 West Patrick Street, Frederick, Maryland, 21701-4065 (“Frederick Housing”) was built prior to 1978 and was not housing for the elderly or persons with disabilities or any 0-bedroom dwelling and, therefore, was “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
19. At all times relevant to the violations alleged herein, the Frederick Housing contained at least two separate “residential dwelling” units within the meaning of Section 401(14) of TSCA, 15 U.S.C. § 2681(14).
20. During May 2015, Respondent performed a “renovation” within the meaning of 40 C.F.R. § 745.83 in the Frederick Housing.
21. Respondent’s renovation referenced in paragraph 20 herein was a “renovation performed for compensation in target housing” within the meaning of 40 C.F.R. § 745.82.
22. On February 17, 2016, a duly authorized representative of EPA conducted an inspection to determine Respondent’s compliance with 40 C.F.R. 745 Part E in connection in the Frederick Housing.
23. 40 C.F.R. § 745.81(a)(2)(ii) provides that “[o]n or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under [40 C.F.R.] § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. 745.82(a) or (c) [sic].”
24. On or about May 30, 2016, Respondent received its initial lead-safe firm certification from EPA.
25. During May 2015, Respondent performed a renovation in the Frederick Housing without first obtaining certification from EPA under 40 C.F.R. § 745.89 as required by 40 C.F.R. § 745.81(a)(2)(ii).
26. Respondent’s acts or omissions described in paragraph 25 herein constitute a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 2 (Certified Renovator)

27. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

28. Pursuant to 40 C.F.R. § 745.89(d)(1), firms are required to ensure that all individuals performing renovation activities on behalf of such firms are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

29. As of May 2015, Respondent failed to ensure that all individuals performing renovation activities on behalf of Respondent were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

30. Respondent's acts or omissions described in paragraph 29 herein constitute a violation of 40 C.F.R. § 745.89(d)(1) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 3 (Information Distribution)

31. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

32. 40 C.F.R. § 745.84(b)(2) provides that no more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing such renovation must notify in writing, or ensure written notification of, each affected unit and make the EPA pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*," available upon request prior to the start of the renovation.

33. Respondent failed to notify in writing, or ensure written notification of, each affected unit of the Frederick Housing as required by 40 C.F.R. § 745.84(b)(2).

34. Respondent's acts or omissions described in paragraph 33 herein constitute a violation of 40 C.F.R. § 745.84(b)(2) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 4 (Work Practice of Waste Containment)

35. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

36. 40 C.F.R. § 745.85(a)(4)(ii) requires that firms, at the conclusion of each work day and at the conclusion of the renovation, store waste that has been collected from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

37. Respondent failed to store the waste collected from the renovation at the Frederick Housing at the conclusion of the renovation and/or each work day under containment, in an enclosure, or behind a barrier as required by 40 C.F.R. § 745.85(a)(4)(ii).

38. Respondent's acts or omissions described in paragraph 37 herein constitute a violation of 40 C.F.R. § 745.85(a)(4)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count 5 (Record Retention)

39. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

40. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745, including, where applicable, records described in 40 C.F.R. § 745.86(b) (1)-(6), for a period of three years following completion of such renovations.

41. Respondent failed to retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the renovation of the Frederick Housing as required by 40 C.F.R. § 745.86(a).

42. Respondent's acts or omissions described in paragraph 41 herein constitute a violation of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

IV. CIVIL PENALTY

43. In settlement of EPA's claims for civil monetary penalties for the violations of TSCA alleged herein Respondent consents to the assessment of a civil penalty in the amount of **Fifteen Thousand Seven Hundred Seventy-Nine Dollars (\$15,779)**, which Respondent shall pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

44. The aforesaid settlement amount is based on a number of factors, including, but not limited to, the facts and circumstances of this case, the statutory factors of Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) (the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice

may require), EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (revised April 2013), EPA's May 2017 *Pilot Lead-Based Paint Graduated Penalty Approach*, and the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19.

45. Respondent shall remit payment of the civil penalty described in paragraph 43 herein and any interest, administrative fees and late payment penalties identified in paragraphs 46, 47, and 48 herein as follows:

- a. By mailing (*via first class U.S. Postal Service mail*) a certified check or cashier's check payable to the "United States Treasury" to:

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

Contacts: Craig Steffen 513-487-2091
Jessica Henderson 513-487-2718 henderson.jessica@epa.gov

- b. By overnight delivery of a certified check or cashier's check payable to the "United States Treasury" to:

U.S. Environmental Protection Agency
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contacts: Craig Steffen 513-487-2091
Jessica Henderson 513-487-2718 henderson.jessica@epa.gov

- c. By delivery of a certified check or cashier's check payable to the "United States Treasury" in any currency drawn on a bank with no USA branches to:

Cincinnati Finance
US EPA, MS-NWD
26 W ML King Drive
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York
ABA: 021030004
Account No: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

- e. By automated clearinghouse (“ACH”) to the following account:

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

- f. Online at: WWW.PAY.GOV/paygov/
Search for SFO 1.1 (for correct form).

- g. Additional payment penalty guidance is available at:

<https://www.epa.gov/financial/makepayment>

- h. All payments by Respondent shall reference the name and address of Respondent Crocker & Little Properties, Inc., and the EPA Docket Number of this CAFO (TSCA-03-2018-0091). At the same time that any payment is made, Respondent shall mail or e-mail a copy of each payment (check or written confirmation of each EFT, ACH or online payment) to:

Janet E. Sharke
Senior Asst. Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

sharke.janet@epa.gov

Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

R3_Hearing_Clerk@epa.gov

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the

costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA and the attached FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

47. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

48. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

49. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CA and the accompanying FO.

V. FULL AND FINAL SATISFACTION

50. This CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 16 of TSCA, 15 U.S.C. § 2615, for the specific violations alleged herein.

VI. OTHER APPLICABLE LAWS

51. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. RESERVATION OF RIGHTS

52. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. CERTIFICATION OF COMPLIANCE

53. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with applicable provisions of TSCA and 40 C.F.R. Part 745.

IX. PARTIES BOUND

54. This CA and the accompanying FO shall apply to and be binding upon EPA, Respondent and Respondent's successors, agents and assigns.

X. EFFECTIVE DATE

55. The effective date of this CA and the accompanying FO (after signature by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer) is the date on which such CAFO is filed with the Regional Hearing Clerk.

XI. ENTIRE AGREEMENT


56. This CA and the accompanying FO constitute the entire agreement and understanding of the Parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XII. EXECUTION

57. The person signing this CA on behalf of Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this CA and to legally bind Respondent to the terms and conditions of this CA and the accompanying FO.

For Respondent:

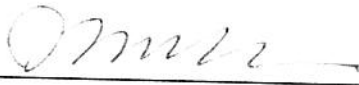
Date: 4/19/18

By: 

Michael S. Crocker, President
Crocker & Little Properties, Inc.

For Complainant:

Date: 5/3/2018

By: 

Janet E. Sharke
Sr. Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, U.S. EPA, Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 5.10.18

By: 

John A. Armstead, Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN RE:)	
	)	DOCKET NO. TSCA-03-2018-0091
Crocker & Little Properties, Inc.)	
612 West Patrick Street)	
Frederick, MD 21701-4065	)	FINAL ORDER
)	
Respondent,)	
)	
600 West Patrick Street	)	Proceeding under Section 16(a) of
Frederick, MD 21701-4065	)	the Toxic Substances Control Act,
	)	15 U.S.C. § 2615(a)
Target Housing.)	

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Crocker & Little Properties, Inc., have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s August 2010 Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (revised April 2013), and the statutory factors set forth in Section 16(a)(2)(B) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a)(2)(B).

NOW, THEREFORE, PURSUANT TO Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **Fifteen Thousand Seven Hundred Seventy-Nine Dollars (\$15,779)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

May 16, 2018
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

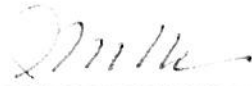
CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order, Docket No. TSCA-03-2018-0091 ("CA/FO"), and further, that I caused true and correct copies of the foregoing CA/FO to be transmitted via United Parcel Service overnight delivery to:

Michael S. Crocker
Crocker & Little Properties, Inc.
612 West Patrick Street
Frederick, MD 21701-4065

Chris M. May, Esq.
Offutt, Horman, Burdette & May, PA
22 West 2nd Street
Frederick, MD 21701

5/17/2018
Date



Janet E. Sharke
Senior Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029