



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 28, 2021

REPLY TO THE ATTENTION OF

VIA ELECTRONIC MAIL

Mr. Steve Klotzbach
President
Klotzbach Custom Builders and Remodelers Inc.
4486 West 220th Street
Fairview Park, Ohio 44126

steve@klotzbachcustombuilders.com

Consent Agreement and Final Order – In the Matter of:
Klotzbach Custom Builders and Remodelers Inc., Docket No. TSCA-05-2021-0012

Dear Mr. Klotzbach:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 28, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,000 is to be paid in the manner described in paragraphs 51 and 52. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

Michael Todd Digitally signed by
Michael Todd
Date: 2021.09.27
08:35:55 -05'00'

Michael Todd
Pesticides and Toxics Compliance Section

Enclosure

cc: Luis Oviedo (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2021-0012
)	
Klotzbach Custom Builders and Remodelers, Inc.))	Proceeding to Assess a Civil
Fairview Park, Ohio)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Klotzbach Custom Builders and Remodelers, Inc., a corporation with a place of business located 4486 West 220th Street, Fairview Park, Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional and factual allegations in this CAFO.

8. Respondent waives its right to any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

13. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), requires the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

14. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

15. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 745.87.

16. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

17. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. *73 Fed. Reg.* 21691 (April 22, 2008).

18. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Part 745, Subpart E applicable to renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

19. 40 C.F.R. § 745.83 defines *firm* to mean 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.

20. 40 C.F.R. § 745.83 defines *pamphlet* to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed

for the same purpose. This includes reproductions of the pamphlet when copied in full and without revisions or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

21. 40 C.F.R. § 745.83 defines *renovation* 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 by this part (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.

22. 40 C.F.R. § 745.83 defines *renovator* to mean 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 an EPA authorized State or Tribal Program.

23. 40 C.F.R. § 745.103 defines *target housing* to mean 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 zero-bedroom dwelling.

24. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

25. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator was assigned to the renovation project.

26. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a).

27. 40 C.F.R. § 745.86(b)(6)(i) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed on-the-job training for workers used on the renovation project.

28. 40 C.F.R. § 745.86(b)(6)(viii) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed the post-cleaning verification described in 40 C.F.R. § 745.85(b).

29. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining a copy of a certification from the certified renovator assigned to the project certifying the requirements in 40 C.F.R. § 745.86(b)(6)(i) through (viii) were completed.

30. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$37,500 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after January 9,

2009 through November 2, 2015, and up to \$40,576 per violation for each day of violation that occurred after November 2, 2015.

General Allegations

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.

32. At all times relevant to this CAFO, Respondent’s corporation was a firm as defined by 40 C.F.R. § 745.83.

33. On July 25, 2019, authorized EPA representatives arrived at Respondent’s place of business, and presented their federal inspector credentials and a written notice of inspection to monitor Respondent’s compliance with Sections 406 and 407 of TSCA.

34. Based on the information provided to Complainant by Respondent, as well as building-year information publicly available on the property value assessment website (accessed on April 22, 2020) of Cuyahoga County (<https://www.cuyahogacounty.us/>), Respondent performed, or directed workers to perform for compensation, the following modifications of existing structures that resulted in disturbances of painted surfaces in the following residential housing built prior to 1978, referenced in this Table:

Line No.	Residential Property Address	Residence Type	Built Year	Work Contract Date	Contracted Renovation Work
1	574 Oakmoor Ave, Bay Village OH 44144	Single Family Home	1930	1/23/2019	a. Demolition of plaster wall and ceiling in kitchen/dining room b. Blow insulation into walls and ceiling
2	20388 Bonnie Bank Blvd., Rocky River OH 44116	Single Family Home	1940	11/20/2018	a. Remove plaster as needed to install electrical and mechanicals b. Insulate exterior walls and ceiling where opened by contractor
3	21801 Elizabeth Ave., Fairview	Single Family	1961	11/15/2018	a. Demolition of rear closet wall

	Park OH 44126	Home			b. Install mechanical vents in rear wall
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35. At the renovations referenced in paragraph 34, Respondent performed or directed performance of modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore renovations as defined in 40 C.F.R. §745.83.

36. The renovations referenced in paragraph 34 were each performed at residential housing built prior to 1978, and therefore each residential housing was target housing as defined in 40 C.F.R. § 745.103.

Count 1 – Failure to Maintain EPA Firm Certification

37. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

38. 40 C.F.R. § 745.89(b)(1)(iii) require firms that perform, offer, or claim to perform renovations for compensation to maintain its certification, and to stop performing renovations at target housing or child-occupied facilities if it fails to obtain recertification before the firm's current certification expires.

39. Respondent did not maintain its firm certification at the time of the renovations referenced in paragraph 34, and did not qualify for an exemption under 40 C.F.R. § 745.82(b).

40. Respondent's failure to maintain its firm certification before performing the three renovations referenced in paragraph 34, constitutes a violation under 40 C.F.R. § 745.89(b)(1)(iii) and 40 C.F.R. § 745.81(a)(2)(ii) and 15 U.S.C. § 2689.

Counts 2 to 4 – Failure to Ensure Certification or Training for Renovators

41. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

42. Respondent performed renovations at the three renovations described in paragraph 34, and failed to ensure that all individuals working on behalf of the firm were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

43. Respondent's failure to ensure that all individuals working on behalf of the firm were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, constitutes three violations (Counts 2, 3 and 4) of 40 C.F.R. § 745.89(d)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 5 to 7 – Failure to Provide Lead Hazard Information Pamphlet

44. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

45. Respondent performed three renovations at single-family target housing, described in paragraph 34, and failed to obtain from the owner the written acknowledgment that the owner had received the EPA approved lead hazard information pamphlet, or obtain a certificate of mailing at least seven days prior to the renovation.

46. Respondent's failure to obtain from the owner of the single-family target housing described in paragraph 34, the written acknowledgement that the owner had received the pamphlet, or obtain a certificate of mailing at least seven days prior to the renovation, constitutes a violation of 40 C.F.R. § 745.84(a)(1)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 8 – Failure to Maintain Records Required by 40 C.F.R. Part 745, Subpart E

47. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

48. In the three contracted renovations described in paragraph 34, Respondent failed to retain the records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the three contracted renovations as follows:

- a. Failure to retain documentation that a certified renovator was assigned to the project;
- b. Failure to retain documentation that the certified renovator provided on-the-job training for workers used on the project;
- c. Failure to retain documentation that the certified renovator performed or directed workers who performed all of the work practice standards in compliance as described in 40 C.F.R. § 745.85(a);
- d. Failure to retain documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), and
- e. Failure to retain and provide a copy of the assigned certified renovator's training certificate.

49. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of three contracted renovations referenced in paragraph 34, constitutes a violation of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Civil Penalty

50. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$4,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged 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 factors as justice may require.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state Respondent's name and the docket number of this CAFO.

52. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Michael Todd (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
todd.michael@epa.gov

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Oviedo.luis@epa.gov

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district

court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

56. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: oviedo.luis@epa.gov (for Complainant), and jcm@marcielaw.com (for Respondent).

57. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

58. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

60. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

61. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C.

§ 2615(a)(2)(B).

62. The terms of this CAFO bind Respondent, and its successors and assigns.

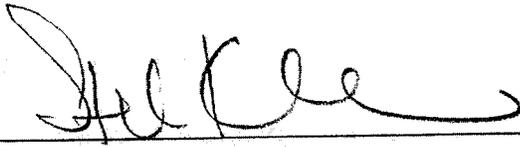
63. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

64. Each party agrees to bear its own costs and attorneys' fees in this action.

65. This CAFO constitutes the entire agreement between the parties.

Klotzbach Custom Builders and Remodelers Inc., Respondent

09/23/2021
Date



Steve Klotzbach
President
Klotzbach Custom Builders and Remodelers Inc.

United States Environmental Protection Agency, Complainant

9/27/21

Date

Harris, Michael

Digitally signed by Harris,
Michael
Date: 2021.09.27 13:52:38
-05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Consent Agreement and Final Order
In the Matter of: Klotzbach Custom Builders and Remodelers Inc.
Docket No. TSCA-05-2021-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN COYLE
Date: 2021.09.27 15:54:57
-05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Klotzbach Custom Builders and Remodelers Inc.
Docket Number: TSCA-05-2021-0012

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on September 28, 2021, this day in the following manner to the addressees:

Copy by e-mail to
Respondent:

Mr. Steve Klotzbach
President
Klotzbach Custom Builders and Remodelers Inc.
4486 West 220th Street
Fairview Park, Ohio 44126
steve@klotzbachcustombuilders.com

Copy by e-mail to
Attorney for Complainant:

Luis Oviedo
oviedo.luis@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5