

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In the Matter of:

**McBreairty Construction, LLC**

Respondent.

Docket No. **TSCA-04-2023-3117(b)**

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a), and Sections 22.13(b) and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is McBreairty Construction, LLC, a limited liability company doing business in the State of South Carolina.

**III. GOVERNING LAW**

6. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, the EPA Administrator promulgated the “Residential Property Renovation Rules” at 40 C.F.R. Part 745, Subpart E,

including the Pre-Renovation Education Rule, Renovation and Repair and Painting Rule, and the Lead-Based Paint Activities Rule. It is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with any of the rules issued under 40 C.F.R. Part 745, Subpart E.

7. The term “target housing” is defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, to mean, in part, any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.
8. The term “renovation” is defined at 40 C.F.R. § 745.83, to mean, in part, 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 following: 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)); and the removal of building components (e.g., walls, ceilings, plumbing, windows).
9. The term “firm” is defined at 40 C.F.R. § 745.83, to mean a company, partnership, corporation, sole proprietorship or individual doing business, association or other business entity; a Federal, State, Tribal, or local government; or a nonprofit organization.
10. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without having obtained certification from the EPA under 40 C.F.R. § 745.89(a)(1), which requires firms that perform renovations for compensation to apply to the EPA for certification to perform renovations.
11. 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 or dust sampling until it is certified anew pursuant to 40 C.F.R. § 745.89(a).
12. Pursuant to 40 C.F.R. § 745.86, firms performing renovations must retain, and, if requested, make them available to the EPA, all records to demonstrate compliance with Subpart E for a period of three years following completion of the renovation. Records that must be retained include, but are not limited to, documentation of compliance with the Work Practice Standards, including documentation demonstrating that a certified renovator was assigned to the project, warning signs were posted to the entrances of the work area and the work area was contained in accordance with the requirements.
13. Pursuant to 40 C.F.R. § 745.87(b), failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by Subpart E, is a violation of TSCA Sections 15 and 409, 15 U.S.C. §§ 2614 and 2689.
14. Persons who violate 40 C.F.R. Part 745, Subpart E, are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19.

#### **IV. FINDINGS OF FACTS**

15. Respondent is, and was at all times relevant to this CAFO, a “firm” that performs “renovations” for compensation as those terms are defined at 40 C.F.R. § 745.83.
16. On December 13, 2022, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, an EPA inspector conducted an inspection of Respondent’s worksite located at 412 Riverland Drive, Charleston, South Carolina 29412 (hereinafter “the Property”) where Respondent was performing a “renovation” as that term is defined at 40 C.F.R. § 745.83, for compensation. The purpose of the inspection was to determine Respondent’s compliance with the Residential Property Renovation Rules at 40 C.F.R. Part 745, Subpart E.
17. The Property was constructed before 1978 and is “target housing” as defined at 40 C.F.R. § 745.103.
18. Subsequent to the inspection, on January 17, 2023, the EPA requested that Respondent provide a copy of its “firm certification” to demonstrate that at the time Respondent performed renovation work at the Property, it had obtained “firm certification” as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1). Respondent was unable to provide evidence that it had obtained firm certification at the time the work was being performed. Additionally, during a Show Cause meeting on May 17, 2023, Respondent stated that at the time it was performing the renovation work at the Property, Respondent had not obtained “firm certification.”

#### **V. ALLEGED VIOLATIONS**

19. Based on Respondent’s inability to provide the requested certification and based on Respondent’s statements presented during the Show Cause meeting held on May 17, 2023, as set forth above, the EPA alleges that at the time Respondent performed renovation work at the Property, Respondent had not obtained firm certification to perform, offer or claim to perform renovations for compensation, in violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1).

#### **VI. STIPULATIONS**

20. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
21. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;

- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO.
22. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
  - d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the "Residential Property Renovation Rules," in 40 C.F.R. Part 745, Subpart E, and the Act, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
  - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
  - f. agrees to comply with the terms of the CAFO.
23. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

24. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **THREE THOUSAND FOUR HUNDRED DOLLARS (\$3,400.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
25. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Code: SL-MO-C2-GL  
St. Louis, Missouri 63101

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Remittance Express (REX): 1-866-234-5681

26. Respondent shall send proof of payment, within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Mathew Rouse  
TSCA Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
rouse.mathew@epa.gov

27. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2023-3117(b).
28. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
  - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
  - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
29. In addition to what is stated in the prior paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:
- a. refer the debt to a credit reporting agency or a collection agency (*see* 40 C.F.R. §§ 13.13 and 13.14);
  - b. 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 (*see* 40 C.F.R. Part 13, Subparts C and H);

- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
  - d. request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
30. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

### **VIII. EFFECT OF CAFO**

31. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
32. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
33. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 16(a) of the Act, 42 U.S.C. § 2615(a), as well as criminal sanctions as provided in Section 16(b) of the Act, 42 U.S.C. § 2615(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
34. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, State, or local laws or statutes, 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, except as expressly provided herein.
35. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.
36. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
37. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
38. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the company, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
39. Any change in ownership, partnership, corporate or legal status relating to the Property, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

40. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
41. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
42. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
43. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
44. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
45. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
46. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

47. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

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**Complainant and Respondent will Each Sign on Separate Pages**

The foregoing Consent Agreement In the Matter of **McBreairty Construction, LLC**, Docket No. **TSCA-04-2023-3117(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Dale McBreairty  
Signature

8/31/2023  
Date

Printed Name: Dale McBreairty

Title: President, McBreairty Construction, LLC

Address: 3136 Ball Court, Mt. Pleasant, SC

29466

The foregoing Consent Agreement In the Matter of **McBreairty Construction, LLC**, Docket No. **TSCA-04-2023-3117(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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for Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**McBreairty Construction, LLC**

Respondent.

Docket No. **TSCA-04-2023-3117(b)**

**FINAL ORDER**

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of **McBreairty Construction, LLC, Docket No. TSCA-04-2023-3117(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

**Via email to all Parties at the following email addresses:**

**To Respondent:** Michael S. Traynham, Counsel  
Maynard Nexsen  
mtraynham@maynardnexsen.com

Dale McBreairty, Owner  
McBreairty Construction, LLC  
dmcb3136@gmail.com

**To EPA:** Mathew Rouse  
Case Development Officer  
rouse.mathew@epa.gov

Kai Hill  
Attorney Advisor  
hill.kai@epa.gov

Robert Caplan  
Senior Attorney  
caplan.robert@epa.gov

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Shannon L. Richardson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
R4\_Regional\_Hearing\_Clerk@epa.gov