

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

9/28/23

5:23 pm

In the Matter of: )  
)  
80 Brown Street, LLC )  
80 Brown Street )  
Westbrook, ME 04092 )  
)  
Sherwood Properties, LLC )  
295 Brown Street )  
Suite #1 )  
Westbrook, ME 04092 )  
)  
Respondents. )  
)  
*Proceeding under Section 16(a) of the* )  
*Toxic Substances Control Act,* )  
*42 U.S.C. § 2615(a).* )  
)

EPA Docket No.  
TSCA-01-2023-0011

Received by  
EPA Region 1  
Hearing Clerk

**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 Respondents, 80 Brown Street, LLC and Sherwood Properties, LLC, violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act (the “Act”), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated pursuant to the Act, set forth at 40 C.F.R. Part 745, Subpart F.

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 Respondents (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 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.

2. In 1996, EPA promulgated regulations to implement Section 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d. The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”).

3. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

- i. Provide to lessees an EPA-approved lead hazard information pamphlet;
- ii. Ensure that the contract to lease includes a Lead Warning Statement;
- iii. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof; and,

- iv. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available.

*See* 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1) – (6).

4. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirement of the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of Section 409 of TSCA, specific civil penalties apply under Section 16 of TSCA.

5. Pursuant to 40 C.F.R. § 745.103, the housing stock addressed by the Disclosure Rule as “target housing” is 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 six years of age resides in or is expected to reside in such housing).

6. 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.

7. 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, 15 U.S.C. § 2814 and 15 U.S.C. § 2689, respectively, shall be liable to the United States for a civil penalty.

8. Section 16(a) of TSCA, Section 1018(b)(5) of the Act, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of \$10,000 per violation of the Disclosure Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (“Debt Collection Improvement Act”), 40 C.F.R. Part 19 and the 2015 Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after January 12, 2022, is subject to a penalty of up to \$19,507. *See* 87 Fed. Reg. 1676 (Jan. 12, 2022).

## **II. GENERAL ALLEGATIONS**

9. Respondent 80 Brown Street, LLC is a limited liability company organized under the laws of the State of Maine. Respondent 80 Brown Street, LLC owns a building located at 80 Brown Street, in Westbrook, Maine.

10. Respondent Sherwood Properties, LLC is a limited liability company organized under the laws of the State of Maine. Respondent Sherwood Properties, LLC offers for lease residential apartment units in the building located at 80 Brown Street, in Westbrook, Maine.

11. At all times relevant to the allegations in this CAFO, Respondents 80 Brown Street, LLC and Sherwood Properties, LLC offered for lease four residential apartment units in the building located at 80 Brown Street, Westbrook, Maine. These apartment units were designated as Unit #1, Unit #2, Unit #3, and Unit #4.

12. At least three children under the age of six-years-old resided in the 80 Brown Street apartment units during the time period relevant to the allegations in this CAFO. Specifically, children resided in Units #2 and #4.

13. The apartment units listed in Paragraph 11 above were, at the time of the violations alleged in this CAFO, “target housing,” as defined in 40 C.F.R. § 745.103. Furthermore, the apartment units did not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the Disclosure Rule (including 40 C.F.R. § 745.101).

14. Pursuant to 40 C.F.R. § 745.103, Respondents 80 Brown Street, LLC and Sherwood Properties, LLC were and are “lessors” of the residential units listed in Paragraph 11.

15. On March 6, 2017 and May 10, 2017, representatives of the Maine Department of Health and Human Services inspected the apartment units listed in Paragraph 11 above. Following the inspection, on approximately April 10, 2017 and May 17, 2017, the Maine Department of Health and Human Services provided Respondent Sherwood Properties, LLC with inspection reports identifying lead-based paint hazards in Unit #4 and lead-based paint in Unit #1, Unit #2, and Unit #3.

16. Specifically, the Maine Department of Health and Human Services informed Respondent Sherwood Properties, LLC that approximately 34% of Unit #1, 29% of Unit #2, and 23% of Unit #3 tested positive for lead-based paint. The Maine Department of Health and Human Services further informed Respondent Sherwood Properties, LLC that approximately 15% of Unit #4 tested positive for lead-based paint and that portions of Unit #4 contained lead-based paint hazards.

17. On April 14, 2017, the Maine Department of Health and Human Services issued an Order to Abate Unit #4 of the 80 Brown Street dwelling. Shortly thereafter, 80 Brown Street,

LLC engaged a certified lead abatement contractor to address the lead-based paint hazards identified in Unit #4.

18. On June 26, 2017, the Maine Department of Health and Human Services notified Mr. James Ernst, 80 Brown Street, LLC, and Sherwood Properties, LLC by letter confirming “that our office has received documentation of post-abatement clearances that meet our standards for lead-safe housing at the [80 Brown Street] property.”

19. On September 1, 2020, EPA issued an Information Request Letter (“IRL”) to both Respondent 80 Brown Street, LLC and a management company associated with Respondents 80 Brown Street, LLC and Sherwood Properties, LLC. The EPA IRL sought records and other information relating to Respondents’ compliance with Disclosure Rule requirements.

20. On September 21, 2020, in response to EPA’s IRL, Respondent 80 Brown Street, LLC submitted information concerning the residential property described in Paragraph 11.

21. Based upon EPA’s review of information, documents obtained from Respondent 80 Brown Street, LLC and EPA’s prior and subsequent investigation of the facts and circumstances underlying the violations, EPA has identified the violations of TSCA, the Act and the Disclosure Rule described below.

### **III. VIOLATION**

22. 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. § 745.118(e), 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 to Disclose the Presence of Known Lead-Based Paint/Hazards*

23. Paragraphs 1 through 22, above, are incorporated by reference as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 745.107(a)(2), before lessees are obligated by contract to lease target housing, a lessor is required to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. The lessor is also required disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

25. Between March 7, 2018 and October 11, 2019, Respondents offered for lease Unit #1, Unit #2, Unit #3, and Unit #4, the four apartment units in the residential building located at 80 Brown Street.<sup>1</sup>

26. Between March 7, 2018 and October 11, 2019, Respondents knew of lead-based paint and/or lead-based paint hazards in each of the four apartment units in the residential building located at 80 Brown Street.

27. Respondents failed to disclose to lessees the presence of the known lead-based paint and/or lead-based paint hazards in the four apartment units in the residential building

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<sup>1</sup> Specifically, leases for the four apartment units in the residential building located at 80 Brown Street were signed on the following dates: a lease for Unit #2 lease was signed on March 7, 2018; a lease for Unit #3 was signed on June 8, 2018; a lease for Unit #1 was signed on August 30, 2018; and a lease for Unit #4 was signed on October 11, 2019.

located at 80 Brown Street.

28. Respondents' failure to disclose to lessees the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased prior to the lessees became obligated to lease target housing violated 40 C.F.R. § 745.107(a)(2) and TSCA Section 409, 15 U.S.C. § 2689.

### **Count Two**

#### *Failure to Provide Records/Reports Pertaining to Lead-Based Paint/Hazards*

29. Paragraphs 1 through 28, above, are incorporated by reference as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 745.107(a)(4), before lessees are obligated by contract to lease target housing, a lessor must provide lessees with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

31. Between March 7, 2018 and October 11, 2019, Respondents offered for lease Unit #1, Unit #2, Unit #3, and Unit #4, the four apartment units in the residential building located at 80 Brown Street.

32. Between March 7, 2018 and October 11, 2019, records and/or reports pertaining to lead-based paint and/or lead-based paint hazards in each of the four apartment units in the residential building located at 80 Brown Street were available to Respondents.



33. Respondents failed to provide to lessees the records and/or reports pertaining to lead-based paint and/or lead-based paint hazards in each of the four apartment units in the residential building located at 80 Brown Street that were available to Respondents.

34. Respondents' failure to provide lessees with records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessees became obligated to lease target housing violated 40 C.F.R. § 745.107(a)(4) and TSCA Section 409.

**Count Three**

*Failure to Include, as an Attachment or Within the Contract to Lease Target Housing, a Statement Disclosing the Presence of Known Lead-Based Paint and/or Hazards*

35. Paragraphs 1 through 34, above, are incorporated by reference as if fully set forth herein.

36. Pursuant to 40 C.F.R. § 745.113(b)(2), contracts to lease target housing must include as attachments to or within the lease contracts a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased.

37. Between March 7, 2018 and October 11, 2019, Respondents offered for lease Unit #1, Unit #2, Unit #3, and Unit #4, the four apartment units in the residential building located at 80 Brown Street.

38. Between March 7, 2018 and October 11, 2019, Respondents knew of lead-based paint and/or lead-based paint hazards in each of the four apartment units in the residential building located at 80 Brown Street.

39. Respondents failed to include, as an attachment to or within the lease contract

with lessees of Units #1 through # 4, a statement adequately disclosing the presence of known lead-based paint and/or lead-based paint hazards in the four apartment units in the residential building located at 80 Brown Street.

40. Respondents' failure to include as an attachment to or within the lease contract, statements by Respondents disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased violated 40 C.F.R. § 745.113(b)(2), and TSCA Section 409.

**Count Four**

*Failure to Include a List of Records/Reports Pertaining to Lead-Based Paint or Lead-Based Paint Hazards in The Housing*

41. Paragraphs 1 through 40, above, are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 745.113(b)(3), contracts to lease target housing must include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased.

43. Between March 7, 2018 and October 11, 2019, Respondents offered for lease Unit #1, Unit #2, Unit #3, and Unit #4, the four apartment units in the residential building located at 80 Brown Street.

44. Between March 7, 2018 and October 11, 2019, records and/or reports pertaining to lead-based paint and/or lead-based paint hazards in each of the four apartment units in the residential building located at 80 Brown Street were available to Respondents.

45. Respondents failed to include, within or attached to the lease contracts with lessees, a list of the available records or reports pertaining to lead-based paint and/or lead-based

paint hazards in the four apartment units in the residential building located at 80 Brown Street.

46. Respondents' failure to include lists of records or reports within or attached to lease contracts to rent target housing violated 40 C.F.R. § 745.113(b)(3), and TSCA Section 409.

#### **IV. TERMS OF SETTLEMENT**

47. This CAFO shall apply to and be binding upon Respondents, their successors and assigns.

48. Respondents stipulate that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondents consent for purposes of settlement to the terms of this CAFO.

49. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO, and waive their right to appeal the Final Order accompanying this Consent Agreement.

50. Respondents certify that they will operate their business in compliance with Section 409 of TSCA, 15 U.S.C. § 2689, the Act, and federal regulations promulgated under TSCA and the Act, including 40 C.F.R. Part 745, Subpart F.

51. As of the effective date of this CAFO, and in compliance with 40 C.F.R. § 745.107(a)(2), Respondents will disclose to their lessees, before the lessees are obligated under any contract to lease target housing, the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. Respondents will also disclose any additional information available concerning the known lead-based paint and/or lead-based paint

hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

52. As of the effective date of this CAFO, and in compliance with 40 C.F.R. § 745.107(a)(4), Respondents will provide their lessees, before the lessees are obligated under any contract to lease target housing, with any records or reports available to Respondents pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased, including records or reports regarding common areas. This also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

53. As of the effective date of this CAFO, and in compliance with 40 C.F.R. § 745.113(b)(2), Respondents will provide to their lessees a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased.

54. As of the effective date of this CAFO, and in compliance with 40 C.F.R. § 745.113(b)(3), Respondents will include a list of records or reports available to Respondents pertaining to lead-based paint and/or lead-based paint hazards in or attached to lease contracts to rent target housing.

55. Respondents consent to the issuance of this CAFO and for the purposes of settlement to the payment of the civil penalty cited in Paragraph 56.

## **V. CIVIL PENALTY**

56. Respondents shall pay a civil penalty of thirty-seven thousand four hundred fifty-

nine dollars (\$37,459). EPA has determined, consistent with statutory penalty criteria and applicable policies, and in conjunction with Respondents' agreement to perform two Supplemental Environmental Projects ("SEPs"), that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

57. Respondents shall pay the penalty of thirty-seven thousand four hundred fifty-nine dollars (\$37,459) plus interest in two installments. The first payment of nine thousand five hundred sixty-one dollars (\$9,561) shall be paid within 30 days of the effective date of this CAFO, but only after the CAFO becomes effective. The second payment of twenty-eight thousand eight hundred seventy-four dollars and forty-three cents (\$28,874.43), including interest, shall be paid within 180 days of the effective date of this CAFO. EPA has determined that paying the penalty in two installments is in the best interest of the United States. The payments shall be made by remitting a check or making an electronic payment, as described below. The checks or other payments shall reference "*In the Matter of 80 Brown Street, LLC; Consent Agreement and Final Order, EPA Region 1,*" Respondents' names and addresses, and the EPA Docket Number of this action (TSCA-01-2023-0011), and be payable to "Treasurer, United States of America." The payments shall be remitted as follows:

**If remitted by regular U.S. mail:**

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000

**If remitted by any overnight commercial carrier:**

U.S. Environmental Protection Agency  
Cincinnati Finance Center Box 979078  
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"

At the time of each payment, a copy of the check (or notification of other type of payment) shall also be sent to (copies 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  
r1\_hearing\_clerk\_filings@epa.gov and  
santiago.wanda@epa.gov

and

Andrea Simpson, Senior Enforcement Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
simpson.andrea@epa.gov

58. If Respondents fail to make the first payment of \$9,561 by its due date, the full amount of \$37,459, plus interest from the effective date, shall be due immediately. Respondents shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

59. 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 Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

60. 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, Respondents agree 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 agree not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

61. Respondents shall complete the SEPs by hiring a licensed lead-abatement contractor to perform lead-based paint abatement at two target housing properties owned by Respondents. At the first property, 4 River Street, Westbrook, Maine, Respondents shall encapsulate the existing exterior wood siding that contains lead-based paint with new vinyl siding. At the second property, 78 South Street, Biddeford, Maine, Respondents shall abate the lead-based paint on the interior of a wood fire escape. The parties agree that the SEPs are

intended to secure significant environmental and public health protection and benefits and will protect families from the dangers of exposure to lead-based paint. These projects are further described in and shall be implemented in accordance with the Scope of Work attached to and hereby incorporated into this CAFO as Attachment A (the “SOW”).

62. The SEPs are consistent with applicable EPA policy and guidelines, specifically, EPA’s 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015).

63. The SEPs advance at least one of the objectives of TSCA by reducing exposure of children and pregnant women to the hazards of lead-based paint. The SEPs are not inconsistent with TSCA. The SEPs relate to the alleged violations, and are designed to reduce:

- a. The adverse impact to public health and/or the environment to which the alleged violations contributed by reducing tenants’ exposure to lead-based paint; and
- b. The overall risk to public health and/or the environment potentially affected by the alleged violations by reducing the risk of possible exposure to lead-based paint.

64. Respondents shall satisfactorily complete the SEPs by December 31, 2023 (“SEP Completion Date”) in accordance with the SOW. EPA may, in its sole discretion, extend the SEP Completion Date and the due date of the SEP Completion Report for good cause shown by Respondents in writing. The total expenditure for the SEPs is expected to be \$57,700.

Completion of the SEPs shall entail: (i) installation of vinyl siding to cover wood siding by a licensed abatement contractor at 4 River Street, Westbrook, Maine; (ii) abatement of lead-based paint by a licensed abatement contractor on the inside of a wood fire escape at 78 South Street, Biddeford, Maine; and (iii) Respondent’s expenditure of approximately \$57,700 in eligible SEP



costs for purposes of carrying out the SEPs in accordance with this CAFO and the SOW.

Eligible SEP costs include those listed in the SOW. Respondents shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report described below. EPA acknowledges that Respondents spent four hundred fifty dollars (\$450) on lead testing in order to develop the SEPs.

65. Upon completion of the SEPs, Respondents shall submit a SEP Completion Report to EPA, as specified in Paragraph 67, below, and Paragraph 5 of the SOW.

66. Respondents hereby certify as follows:

- a. that all cost information provided to the EPA in connection with the EPA's approval of the SEPs is complete and accurate and that Respondents in good faith estimate that the cost to implement the SEPs is \$57,700;
- b. that, as of the date of executing this CAFO, Respondents are not required to perform or develop the SEPs by any federal, state, or local law or regulation, and are not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the SEPs are not projects that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- d. that Respondents have not received and will not receive credit for the SEPs in any other enforcement action;
- e. that Respondents have not received and will not receive any reimbursement for any portion of the SEPs from any other person or entity;

- f. that for federal income tax purposes, Respondents will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs; and
- g. that Respondents are not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs.

67. Respondents shall submit to EPA a SEP Progress Report no later than November 15, 2023. Except as otherwise provided in Paragraph 64, Respondent shall submit a SEP Completion Report by January 31, 2024, covering both of the SEPs. The SEP Progress Report and SEP Completion Report shall contain the information set forth in Paragraphs 4 and 5, respectively, of the SOW.

68. Respondents agree that failure to submit the SEP Progress Report or the SEP Completion Report in accordance with the requirements of Paragraph 67, above, and Paragraphs 4 and 5 of the SOW, shall be deemed a violation of this CAFO and Respondents shall become liable for stipulated penalties pursuant to Paragraph 73, below.

69. In itemizing costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph 69, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods for which payment is being made. Canceled checks alone do not constitute acceptable documentation unless such checks specifically identify and itemize the individual costs of the goods for which payment is being made.

70. Respondents shall maintain legible copies of all documentation relating to the SEPs and all documents or reports submitted to EPA pursuant to this CAFO for a period of three (3) years after completion of all requirements set forth in this CAFO. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondents shall certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by arranging for a representative to sign the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

71. After receipt of the SEP Completion Report as required by Paragraph 67, above, and the SOW, EPA will notify Respondents in writing: (i) indicating that both projects have been completed satisfactorily; or (ii) identifying any deficiencies in the SEP Completion Report and granting Respondents an additional thirty (30) days to correct any deficiencies; or (iii) determining that one or both of the projects has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraphs 73 through 76, below.

72. If EPA elects to exercise option (ii) in Paragraph 71, above (*i.e.*, if EPA determines that the SEP Completion Report is deficient and EPA has not yet made a final determination about the adequacy of SEP completion itself), Respondents may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency given pursuant to Paragraph 71 within ten (10) days of receipt of such notification. EPA and

Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEPs to Respondents, which decision shall be final and binding upon Respondents. Respondents agree to comply with any requirements for adequate completion of the SEPs imposed by EPA in its written statement. In the event one or both of the SEPs is/are not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondents to EPA in accordance with Paragraphs 73 through 76 below.

73. In the event that Respondents fail to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs described in Paragraphs 61 through 67 above, or any of the terms or provisions of the SOW, except as any such terms or provisions are modified pursuant to this CAFO, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

- a. for failure to submit the required SEP Progress Report, and/or failure to provide the SEP Completion Report, Respondents shall pay \$200 per day for the first thirty (30) days of violation; \$300 for the next sixty (60) days of violation; and \$500 per day for each day of violation thereafter until the deadline is achieved or the report is submitted; and
- b. for failure to satisfactorily complete the SEPs as described in this CAFO and the SOW, Respondents shall pay \$350 per day for the first thirty (30) days of violation and \$750 per day for each day thereafter, but the total stipulated penalty

in this subsection b shall not exceed \$63,470, except that any sum expended by Respondents towards completion of the SEPs as set forth in the SOW may, at EPA's discretion, be credited against the \$63,470, thereby reducing the maximum stipulated penalty in this Subsection b.

74. The determination of whether the SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

75. Stipulated penalties as set forth in Paragraph 73, above, shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity. EPA may, in its sole discretion, elect not to seek stipulated penalties or elect to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

76. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment of the stipulated penalty shall be in accordance with Paragraph 57, above, and interest and late charges shall be paid as stated in Paragraph 58, above.

77. Any public statement made by Respondents, oral or written, in print, film, or other media, that makes reference to the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Toxic Substances Control Act and the Residential Lead-Based Paint Hazard Reduction Act."

78. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), the provisions in Paragraphs 50 through 54, above, are required to come into compliance with the

law.

79. This CAFO shall not relieve Respondents of their 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.

80. This CAFO constitutes a settlement by and between EPA and Respondents of all claims for civil penalties pursuant to TSCA and the Act 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 Respondents. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

81. 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).

82. 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.

83. Complainant and Respondents, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by electronic mail, to the following address: DVanSlyke@preti.com. Complainant has provided Respondents with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

84. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondents specifically waive 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 Respondents:

  
\_\_\_\_\_  
James Ernst, Managing Member  
80 Brown Street, LLC

9/22/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James Ernst, Managing Member  
Sherwood Properties, LLC

9/22/2023  
\_\_\_\_\_  
Date

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

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James Chow, Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 1



## FINAL ORDER

Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), authorizes EPA to compromise with or without conditions the maximum civil penalties which may be imposed under that Section. EPA has made such a compromise by applying the penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), to the facts and circumstances of this case, including the nature, circumstances, extent and gravity of the violations and with respect to the violator, ability to pay effect on ability to continue in business, any history of prior such violations, and the degree of culpability.

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. Respondents are 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. Environmental Protection Agency, Region 1

\_\_\_\_\_  
Date