UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Received by
EPA Region 1
Hearing Clerk

In the Matter of:

RUSSELL APARTMENTS, LLC
139 West Main Street
Waterbury, CT 06702-2007,

Proceeding under Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a).

CAA-01-2022-0038
and
TSCA-01-2022-0039

CONSENT AGREEMENT
AND FINAL ORDER

I. INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 ("EPA"), as Complainant, and Russell Apartments, LLC ("Russell"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO notifies Russell that EPA intends to assess penalties for Respondent's violation of Section 112 of the Clean Air Act ("Air Act" or "CAA"), 42 U.S.C. § 7412, and regulations promulgated under Section 112 known as the National Emission Standard for Hazardous Air Pollutants for asbestos, at 40 C.F.R. Part 61, Subpart M ("Asbestos NESHAP") and that EPA intends to assess penalties for Respondent's violation of Sections 15 and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA known as the Renovation, Repair and Painting Rule ("RRP Rule"), at 40 C.F.R. Part 745, Subparts E and L. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action for penalties described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the Asbestos NESHAP claims, and Section 16(a) of TSCA, 15

U.S.C. § 2615(a), for the RRP Rule claims. Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolution.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

A. RESPONDENT, STIPULATIONS, WAIVERS, AND CERTIFICATIONS

4. Russell is a limited liability company organized in or around January 2017 under the laws of Connecticut. Russell operates as a property management, development, and general contracting company with its principal place of business located at 139 West Main Street in Waterbury, CT. Russell identifies ANE Realty Solutions LLC ("ANE Realty") as Member of the Russell company.

5. ANE Realty is a Connecticut limited liability property management company with its principal business address located at 139 West Main Street in Waterbury.

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, consents to the terms of this CAFO.

7. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

8. Respondent hereby certifies, to the best of its information and belief, after

thorough inquiry, that the information provided to EPA during the course of EPA's investigation into this matter, including financial information, is true and complete.

B. CLEAN AIR ACT AND ASBESTOS NESHAP REQUIREMENTS

9. Section 113(d)(1) of the Air Act, 42 U.S.C. § 7413(d)(1), provides authority for the assessment of civil administrative penalties of up to $25,000 per day of violation for violations of, among other things, regulations promulgated under CAA Section 112. The $25,000 statutory maximum penalty amount in CAA Section 113(d)(1) was increased, under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 ("2015 Inflation Act") and EPA's Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 ("EPA Inflation Rule"), to $51,796 per day of violation for violations occurring after November 2, 2015 where penalties are assessed on or after January 12, 2022. *See* 28 U.S.C. § 2461 note, Pub. L.114-74, Section 701 (Nov. 2, 2015); 87 Fed. Reg. 1676 (Jan. 12, 2022).

10. The Administrator of EPA, under Section 112 of the Air Act, has promulgated the Asbestos NESHAP regulations at 40 C.F.R. Part 61, Subpart M.

11. Pursuant to the Asbestos NESHAP at 40 C.F.R. § 61.141, the term "asbestos" is defined to mean the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

12. The term "owner or operator of a demolition or renovation activity" is defined at 40 C.F.R. § 61.141 to mean any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

13. The term "facility" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any institutional, commercial, public, industrial, or residential structure, installation, or building

(including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.

14. The term "renovation" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean altering a facility or one or more facility components in any way, including the stripping or removal of RACM (regulated asbestos-containing material) from a facility component.

15. The term "demolition" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

16. The term "facility component" is defined at 40 C.F.R § 61.141 to mean any part of a facility including equipment.

17. The term "friable asbestos material" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any material containing more than one percent asbestos (by area), that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

18. The term "Category I nonfriable asbestos-containing material (ACM)" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos (by area).

19. The term "Category II nonfriable asbestos-containing material (ACM)" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any material, excluding Category I nonfriable ACM, containing more than one percent asbestos (by area) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

20. The term "regulated asbestos-containing material (RACM)" is defined at 40 C.F.R. § 61.141 to mean (a) Friable asbestos material, (b) Category I nonfriable ACM that has

become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by (the Asbestos NESHAP).

21. The term "adequately wet" is defined, in pertinent part, at40 C.F.R. §61.141 to mean sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

22. The term "leak-tight" is defined at 40 C.F.R. § 61.141 to mean that solids or liquids cannot escape or spill out. It also means dust-tight.

23. The term "remove" is defined at 40 C.F.R. § 61.141 to mean to take out RACM or facility components that contain or are covered with RACM from any facility.

24. The term "strip" is defined at 40 C.F.R. § 61.141 to mean take off RACM from any part of a facility or facility components.

25. Under the Asbestos NESHAP, certain inspection, notification, work practice, and waste disposal requirements at 40 C.F.R. §§ 61.145(a), 61.145(b), 61.145(c), and 61.150 apply to each owner or operator of a demolition or renovation activity at a regulated facility when the combined amount of regulated asbestos-containing material (RACM) to be stripped, removed, dislodged, cut, drilled, or similarly disturbed meets or exceeds the regulatory threshold amount of at least 80 linear meters (260 linear feet) on pipes, at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components

where the length or area could not be measured previously (hereinafter, this 260/160/35 foot regulatory threshold amount is referred to as the "Threshold Quantity"). *See* 40 C.F.R. § 61.145(a)(4).

26. Pursuant to the Asbestos NESHAP at 40 C.F.R. § 61.145(a), among other things, an owner or operator of a demolition or renovation activity must, prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I nonfriable asbestos-containing material (ACM) and Category II nonfriable ACM.

27. Pursuant to the Asbestos NESHAP at 40 C.F.R. §§ 61.145(a) and 61.145(b), for planned renovation operations involving at least the Threshold Quantity of RACM, an owner or operator of a demolition or renovation activity must provide prior written notice of intention to demolish or renovate. For such planned renovation operations, 40 C.F.R. §§ 61.145(a)(4) and 61.145(b)(3) require that the prior written notification be submitted to EPA at least ten (10) working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material).

28. Pursuant to the Asbestos NESHAP at 40 C.F.R. § 61.145(c)(3), for scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of RACM, when RACM is stripped from a facility component while it remains in place at the facility, each owner or operator of a demolition or renovation activity adequately wet the RACM during stripping, unless prior written approval to use another emission control method is obtained from EPA.

29. Pursuant to the Asbestos NESHAP at 40 C.F.R. § 61.145(c)(6)(i), for scheduled demolition and renovation operations at a facility involving at least the Threshold Quantity of

RACM, each owner or operator of a demolition or renovation activity adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

C. TSCA AND RRP RULE REQUIREMENTS

30. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act ("Lead Act") in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Lead Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Lead Act added a new section to TSCA, entitled Subchapter IV – Lead Exposure Reduction, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

31. In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA [Lead Hazard Information Pamphlet – Renovation of Target Housing], 15 U.S.C. § 2686(b), and those regulations were set forth at 40 C.F.R. Part 745, Subpart E [Residential Property Renovation, 40 C.F.R. §§ 745.80-745.92], commonly referred to as the "Pre-Renovation Education Rule" or "PRE Rule."

32. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the Lead-Based Paint Activities Rule at 40 C.F.R. Part

745, Subpart L, now commonly referred to as the "RRP Rule."

33. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

34. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Lead Act and the RRP Rule is "target housing," defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). *See* 40 C.F.R. § 745.103.

35. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in "child-occupied facilities," as defined in 40 C.F.R. § 745.83.

36. 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.

37. Pursuant to 40 C.F.R. § 745.83, the term "firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

38. Pursuant to 40 C.F.R. § 745.83, the term "renovation" means the modification of

any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an "abatement," as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g. cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

39. Pursuant to 40 C.F.R. § 745.83, the term "minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

40. Pursuant to 40 C.F.R. § 745.83, the term "renovator" means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by an EPA-authorized State or Tribal program.

41. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to the Respondent or any violation alleged in this CAFO, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

a. Obtain an EPA certification for the firm prior to performing renovations; and,

b. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation.

See 40 C.F.R. §§ 745.81(a)(2) and 745.89(d)(1) and (d)(2).

42. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA, including the RRP Rule. Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA.

43. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

44. TSCA Section 16(a)(1) and the RRP Rule at 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to $25,000 per violation per day of the RRP Rule. This $25,000 statutory maximum penalty amount was increased, under the 2015 Inflation Act and EPA's Inflation Rule, to $43,611 per day of violation for violations occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022. *See* 28 U.S.C. § 2461 note, Pub. L.114-74, Section 701 (Nov. 2, 2015); 87 Fed. Reg. 1676 (Jan. 12, 2022).

III. EPA FINDINGS

45. On or about March 31, 2017, Respondent purchased a property located at 73-77 Bank Street in Waterbury, CT (the "Facility" or "Bank Street Facility"). The Bank Street Facility was constructed in or around 1929 and consists of a three-story masonry building which encompasses approximately 12,000-13,000 square feet (ft^2) of floor space.

46. Beginning on or about June 1, 2018, a limited Hazardous Building Materials

Inspection was conducted at the Facility by Fuss & O'Neill EnviroScience, LLC (the "EnviroScience Inspection"), in anticipation of renovations at the Bank Street Facility. The EnviroScience Inspection was prepared for the Housing Development Fund, Inc., a Connecticut-based, HUD-certified counseling and lending agency.

47. The EnviroScience Inspection was conducted under a written scope of work for purposes of identifying and assessing hazardous building materials —including, among others, asbestos and lead-based paint— and was completed without the use of destructive investigative techniques to access or observe concealed areas such as wall cavities, pipe chases, and spaces above fixed ceilings that may have had suspect asbestos-containing materials.

48. A written Hazardous Building Materials Inspection Report dated June 27, 2018 (the "2018 Inspection Report"), documented the facts and circumstances underlying the EnviroScience Inspection.

49. Among other things, the 2018 Inspection Report documented the performance of a lead-based paint determination relating to coated building components in the Facility that could be disturbed by proposed renovation activities. Among other things, the 2018 Inspection Report documents the use of an X-ray fluorescence ("XRF") analyzer and generally accepted industry standards for residential child-occupied buildings to support a determination that lead-based paint was present on coated building components throughout the Facility, including plaster ceilings and walls.

50. Citing the RRP Rule, at 40 C.F.R. §§ 745.80 – 745.92, the 2018 Inspection Report recommended that, for purposes of complying with the RRP Rule, a "comprehensive lead inspection of the entire structure or targeted areas scheduled for renovation" be completed and that "RRP work practice and training requirements" would apply if the renovation involved the

disturbance of "more than de-minimus [sic] amounts" of surfaces containing lead-based paint.

51. The 2018 Inspection Report confirmed the presence of lead-based paint at the Bank Street Facility based on visual observation, physical sampling, use of analytical devices, testing, and analysis of materials anticipated to be disturbed by proposed renovation activities. Among other supporting documentation, the 2018 Inspection Report included a narrative description of Facility conditions, photographs taken during the 2018 Inspection, records of physical samples collected (including chain of custody forms), and reports of laboratory testing and analysis.

52. The 2018 Inspection Report cited the Asbestos NESHAP (40 C.F.R. Part 61, Subpart M) and specifically noted that any "ACM that would likely be impacted by the proposed renovation/demolition activities must first be abated" by a licensed asbestos abatement professional. The 2018 Inspection Report further recommended that a "comprehensive scope of work and technical specification be developed as part of the renovation plans" for the Facility and, under separate cover, provided a cost summary for the removal of asbestos from the site.

53. The 2018 Inspection Report documented the presence of asbestos-containing materials at multiple locations throughout the Bank Street Facility —including floor tiles and other flooring materials, thermal system insulation on pipes, fittings, and boiler components, and roofing materials, namely, shingle and cement— based on visual observation, physical sampling, and laboratory testing and analysis of materials anticipated to be disturbed by proposed renovation activities. Among other supporting documentation, the 2018 Inspection Report included a narrative description of Facility conditions, photographs taken during the 2018 Inspection, records of physical samples collected (including chain of custody forms), and reports of laboratory testing and analysis.

54. Upon completion, the 2018 Inspection Report was provided to the Facility owner, Russell Apartments, LLC. The 2018 Inspection Report included multiple, explicit references to federal environmental regulations and their requirements, including the Asbestos NESHAP and the RRP Rule.

55. On or about July 22, 2020, Respondent, its employees, or agents sought and obtained from the City of Waterbury, CT a Building Permit (No. 2020.1276) for the Bank Street Facility ("Building Permit"). The stated basis for the Building Permit was to "convert office space into 10 apartments" and change the Facility use from office to residential space.

56. On or about September 22, 2020, Respondent, its employees, or agents sought and obtained from the City of Waterbury, CT a Plumbing Permit (No. 2020.2412) for the Bank Street Facility ("Plumbing Permit"). The stated basis for the Plumbing Permit was to "renovate existing apartments and install new fixtures and piping."

57. On or about October 29, 2020, Respondent, its employees, or agents sought and obtained from the City of Waterbury, CT a Sprinkler Permit (No. 2020.2484) for the Bank Street Facility ("Sprinkler Permit"). The stated basis for the Sprinkler Permit was to "install new sprinkler system throughout the building."

58. Beginning in or around December 2020 and continuing until or around January 2021, Respondent, its employees, or agents carried out demolition or renovation activities throughout the vacant Bank Street Facility in an effort that included, without limitation, conversion of the Facility interior from office and retail space into approximately ten separate residential units plus new retail space (collectively, such demolition or renovation activities will be referred to herein as the "Bank Street Renovation").

59. On or around January 11, 2021, Eagle Environmental, Inc. ("Eagle") of

Terryville, CT performed an asbestos inspection at the Bank Street Facility ("Eagle Inspection") as part of a contamination assessment at that location. The Facility assessment by Eagle ("Eagle Assessment") included a visual inspection, bulk asbestos sampling, and Transmission Electron Microscopy ("TEM") air sampling.

60. The Eagle Inspection documented the demolition of plaster walls and ceilings, ceiling tiles, sheetrock, ceramic tile, and miscellaneous building materials throughout the Facility. In addition, during the Eagle Inspection, such demolition materials were observed to be located uncontained throughout the Facility, including in large, dry, and dusty debris piles.

61. On or about January 20, 2021, Eagle submitted a written "Application for Alternative Work Practices" and "Alternative Work Practice Request" (collectively, the "AWP Request") to the State of Connecticut Department of Public Health ("CT DPH"), on behalf of the Facility owner (Russell) seeking approval for clean-up, abatement, removal and disposal work associated with the approximately 12,000 square feet of interior Facility floor space, walls, ceilings, and contents affected by the Bank Street Renovation. The Eagle Inspection and Eagle Assessment formed the basis of the written alternative work practice application and request submitted to CT DPH.

62. On or about January 28, 2021, the CT DPH acted on the AWP Request by issuing a written approval ("CT DPH Approval") of Eagle's application "to decontaminate the facility prior to conducting any further renovation activities." By its terms, the CT DPH Approval addressed, among other things, over 500 linear feet of asbestos-containing pipe insulation affected by the Bank Street Renovation.

63. Laboratory analysis of samples collected from asbestos-containing materials affected by the Bank Street Renovation, including pipe insulation, established that such material

contained greater than one percent asbestos and was "regulated asbestos-containing material (RACM)," as defined at 40 C.F.R. § 61.141.

IV. VIOLATIONS

CLEAN AIR ACT AND ASBESTOS NESHAP VIOLATIONS

64. EPA makes these findings that the Respondent violated Section 112 of the Air Act and applicable Asbestos NESHAP notification and work practice requirements based on an investigation of facts and circumstances underlying Respondent's participation in demolition or renovation activities undertaken as part of the Bank Street Renovation.

65. The Administrator of EPA and the Attorney General for the U.S. Department of Justice have jointly determined that this action, which addresses certain violations of the CAA and the Asbestos NESHAP that commenced more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the Air Act.

66. Respondent is a "person" as defined in Section 302(e) of the Air Act, 42 U.S.C. § 7602(e).

67. For purposes of the Bank Street Renovation, Respondent was an "owner or operator of a demolition or renovation activity" within the meaning of the Asbestos NESHAP.

68. The Bank Street Renovation was a "renovation" involving "planned renovation operations" within the meaning of the Asbestos NESHAP.

69. The Bank Street Renovation involved the stripping or removal of RACM at or above the Threshold Quantity set forth in the Asbestos NESHAP, at 40 C.F.R. § 61.145(a)(4).

70. EPA has identified the following violations of the Clean Air Act and Asbestos NESHAP requirements based on documents and other information obtained during EPA's investigation of the facts and circumstances underlying such violations.

Count 1 – Failure to Notify of Intention to Renovate (Asbestos NESHAP)

71. Paragraphs 1 through 70, above, are incorporated by reference as if fully set forth herein.

72. As referenced above, for planned renovation operations involving at least the Threshold Quantity of RACM, an owner or operator of a demolition or renovation activity must provide EPA with prior written notice of intention to demolish or renovate no less than 10 working days before asbestos stripping or removal work or any other activity begins that could break up, dislodge or similarly disturb asbestos material. 40 C.F.R. §§ 61.145(a) and 61.145(b).

73. With respect to the Bank Street Renovation, Respondent failed to provide EPA with prior written notification of intention to renovate at least ten (10) working days prior to the start of the operations, as required by 40 C.F.R. § 61.145(b).

74. Accordingly, Russell violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(b), and Section 112 of the Air Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Air Act, 42 U.S.C. § 7413(d).

Count 2 – Failure to Adequately Wet Asbestos While Stripping (Asbestos NESHAP)

75. Paragraphs 1 through 74, above, are incorporated by reference as if fully set forth herein.

76. As referenced above, for planned renovation operations involving at least the Threshold Quantity of RACM, when RACM is stripped from a facility component while it remains in place, an owner or operator of a demolition or renovation activity must adequately wet RACM during stripping, unless prior written approval to use another emission control method is obtained from EPA. 40 C.F.R. § 61.145(c)(3).

77. During the Bank Street Renovation, Respondent failed to adequately wet RACM

during stripping or to obtain prior EPA approval of another control method, as required by 40 C.F.R. § 61.145(c)(3).

78. Accordingly, Russell violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(c)(3), and Section 112 of the Air Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Air Act.

Count 3 – Failure to Keep Asbestos Adequately Wet (Asbestos NESHAP)

79. Paragraphs 1 through 78, above, are incorporated by reference as if fully set forth herein.

80. As referenced above, for planned renovation operations involving at least the Threshold Quantity of RACM, an owner or operator of a demolition or renovation activity must adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated for disposal under the Asbestos NESHAP. 40 C.F.R. § 61.145(c)(6)(i).

81. During the Bank Street Renovation, Respondent failed to adequately wet RACM that had been removed or stripped and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150, as required by 40 C.F.R. § 61.145(c)(6)(i).

82. Accordingly, Russell violated the Asbestos NESHAP, at 40 C.F.R. § 61.145(c)(6)(i), and Section 112 of the Air Act and, as a result, is properly subject to the assessment of civil penalties pursuant to Section 113(d) of the Air Act.

TSCA RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

83. The Bank Street Renovation was a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule and, also, does not fall within any

exemption set forth in 40 C.F.R. § 745.82.

84. The Bank Street Facility constitutes "target housing" as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Neither the Facility nor any of the residential units therein satisfies the requirements for an exemption under the provisions of the Lead Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

85. At all times relevant to the violations alleged in this CAFO, Respondent was a "firm," as defined in 40 C.F.R. § 746.83.

86. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained during EPA's investigation of the facts and circumstances underlying such violations.

Count 4 – Failure to Obtain Firm Certification (RRP Rule)

87. Paragraphs 1 through 86, above, are incorporated by reference as if fully set forth herein.

88. Pursuant to 40 C.F.R. § 745.81(a)(2), no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

89. Beginning in or before July 2020, and continuing into January 2021, Respondent conducted the Bank Street Renovation which involved the disturbance of over six (6) square feet of interior painted surface and, in particular, demolition of painted surface areas, sanding and/or scraping, that can generate paint chips, debris, and dust.

90. The Bank Street Renovation did not qualify as minor maintenance and repair

activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

91. At no time before or during the Bank Street Renovation had Russell obtained initial EPA certification as a firm under 40 C.F.R. § 745.89(a).

92. Respondent's performance of the Bank Street Renovation without being certified as a firm under 40 C.F.R. § 745.89 constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and TSCA Section 409.

93. The above-referenced violation alleged in this Fourth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Count 5 – Failure to Ensure Certified Renovator Performs or Directs Work (RRP Rule)

94. Paragraphs 1 through 93, above, are incorporated by reference as if fully set forth herein.

95. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations in target housing must ensure that all individuals who perform renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

96. At no time before or during the Bank Street Renovation was the person performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the Bank Street Renovation, as specified under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

97. Respondent's failure to ensure that each individual performing renovation

activities at the Bank Street Renovation was either a certified renovator or trained by a certified renovator and its failure to ensure that a certified renovator was assigned to the Bank Street Renovation to carry out all of the responsibilities in 40 C.F.R. § 745.90 constituted violations of 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

98. Each of the above-listed violations alleged in this Fifth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87 and each is a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

V. TERMS OF SETTLEMENT

99. By signing this CAFO, Respondent hereby certifies that it is currently operating in compliance with Section 112 of the Air Act and the Asbestos NESHAP regulations.

100. By signing this CAFO, Respondent hereby certifies that it is currently operating in compliance with the requirements of Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and the RRP Rule requirements.

101. In light of the above, and taking into account, for the CAA and Asbestos NESHAP violations, the factors enumerated in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's October 25, 1991 "Clean Air Act Stationary Source Civil Penalty Policy" and Appendix III thereto (the May 5, 1992 "Asbestos Demolition and Renovation Civil Penalty Policy") and, for the TSCA and RRP Rule violations, taking into account the factors enumerated in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and the August 2010 "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" as well as, for both the CAA and TSCA violations, the Civil Monetary Penalty Inflation Adjustment Rule (40 C.F.R. Part 19), EPA's latest civil penalty inflationary guidance ("Amendments to EPA's Civil Penalty Policies

to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule"), and such other factors as justice may require, including Respondent's financial ability to pay the penalty, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of Twenty-five thousand dollars ($25,000.00) in settlement of the violations alleged in Section IV, above.

102. Respondent shall pay the penalty of $25,000.00 within 30 days of the effective date of this CAFO in the manner described below:

a. Payment shall be in a single payment of $25,000.00 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day.

b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of Russell Apartments, LLC*, Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Numbers for this action (CAA-01-2022-0038 and TSCA-01-2022-0039), shall be in the amount stated in Paragraph 101 above, and shall be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:
U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

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

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (Mail Code 04-6)
Boston, MA 02109-3912

and

Jordan Alves, Asbestos NESHAP Coordinator
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Suite 100 (Mail Code 05-4)
Boston, MA 02109-3912

Within 24 hours of payment, Respondent also shall provide e-mail notice of payment, along with a copy of the check or other proof of payment (e.g., electronic payment receipt), in portable document format (pdf) or equivalent, to Wanda I. Santiago, Regional Hearing Clerk, at R1_Hearing_Clerk_Filings@epa.gov, and Jordan Alves, at Alves.jordan@epa.gov.

103. The failure to pay any portion of the civil penalty when due shall subject Respondent to interest, penalties, charges and costs for nonpayment as provided under applicable law. In the event of a collections action undertaken by the United States, the validity, amount, and appropriateness of the civil penalty shall not be subject to review.

104. 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 the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments

in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

105. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the Air Act and Section 16(a) of TSCA for the specific violations alleged in Section IV of this CAFO.

106. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

107. Each of the Parties shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

108. By entering into this CAFO, each of the Parties gives their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO through its authorized representative, by e-mail, to jane@vasaturolaw.com. Respondent understands that this e-mail address may be made public when the CAFO is filed and uploaded to a searchable database.

109. Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent, RUSSELL APARTMENTS, LLC:

(Respondent's Representative)	Member (Title)	7/12/22 (Date)

For Complainant, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1:

_______________________________ Date:_____________

Karen McGuire, Director
Office of Enforcement and Compliance Assurance
U.S. EPA, Region 1

VI. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18 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. Respondent, Russell Apartments LLC, is hereby ORDERED to comply with the terms of the Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

____
(Date)

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