

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

<p>In the Matter of:</p> <p>Roll With It Painting & Repair, LLC</p> <p>Columbus, Ohio,</p> <p style="padding-left: 40px;">Respondent.</p> <hr style="border: 1px solid black;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. TSCA-05-2024-0003</p> <p>Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)</p>
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Consent Agreement and Final Order

Preliminary Statement

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

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

3. Respondent is Roll With It Painting & Repair, a sole proprietorship with a place of business located at 3502 Jonathan Noble Way, Columbus, Ohio 43231.

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

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

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

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

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

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. *See* 42 U.S.C. § 4851.

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

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

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires the Administrator of EPA to promulgate guidelines to reduce the risk of exposure to lead in connection with renovation and remodeling activities in target housing and public buildings built before 1978, and commercial buildings. TSCA Section 402(c) also revised the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. 15 U.S.C. § 2682(c)(3).

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

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

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

16. Pursuant to Sections 402 and 407 of TSCA, 15 U.S.C. §§ 2682 and 2687 EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. 73 Fed. Reg. 21691 (April 22, 2008).

17. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

18. 40 C.F.R. § 745.83 defines *child-occupied facility* to mean a building constructed prior to 1978, visited regularly by the same child, under 6 years of age. The child must visit the facility for at least 3 hours during each visit, for a combined weekly visit of at least 6 hours, and a combined annual visit of at least 60 hours. A building that meets the definition of a child-occupied facility remains designated as such for at least a period of one year.

19. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

20. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The

term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

21. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

22. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89(d), using certified renovators in accordance with 40 C.F.R. § 745.90(b).

23. 40 C.F.R. § 745.85(a)(5) requires that after completing a renovation, the firm must clean the work area until no dust, debris or residue remains.

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

25. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator was assigned to the renovation project, that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a),

and that the certified renovator performed on-the-job training for workers used on the renovation project.

26. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$46,989 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 12, 2023.

Factual Allegations and Alleged Violations

27. At all times relevant to this Complaint, Respondent was a sole proprietorship with a place of business located at 3502 Jonathan Noble Way, Columbus, Ohio, and was therefore a firm as defined by 40 C.F.R. § 745.83.

28. On August 11-12, 2022, EPA received a tip and completed Lead Questionnaire from Columbus Public Health that stated the City observed improperly remediated paint chips at a recently renovated school for young children in Columbus, Ohio. The tip stated that the renovation work was completed by Respondent.

29. On October 19, 2022, EPA sent an information request letter (IRL) via UPS to Respondent's place of business located at 3502 Jonathan Noble Way, Columbus, Ohio, regarding Respondent's compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

30. On November 14, 2022, Respondent replied to the IRL via email and provided records. Based on information and records provided by Respondent, it performed or directed workers who performed window replacements and a second story addition to the property described in the chart below:

Renovation Work Performed at Child-Occupied Facility

Facility Address	Year Built	Contracted Work	Date(s) Work Performed
387 East Beck Street, Columbus, Ohio 43215	1900	Exterior Painting	July 21 – August 10, 2022

31. The exterior painting that Respondent performed at the property listed in Paragraph 30, above, were modifications of the buildings’ existing structure that resulted in disturbance of painted surfaces and were therefore renovations as defined in 40 C.F.R. § 745.83.

32. EPA’s October 19, 2022, IRL requested all records for the renovations that Respondent performed from August 1, 2019 to October 15, 2022. Respondent provided the contract for the renovation identified in Paragraph 30, above, but did not provide records necessary to demonstrate compliance with all requisite work practice standards in 40 C.F.R. § 745.85.

33. The building listed at the addresses in Paragraph 30, above, is a child-occupied facility built prior to 1978, as defined in 40 C.F.R. § 745.83.

34. Respondent either performed or directed workers to perform the renovation described in Paragraph 30, above, and is therefore a renovator as defined in 40 C.F.R. § 745.83.

Count 1 – Failure to Clean Work Area After Completing a Renovation Until No Dust, Debris, or Residue Remains

35. Complainant incorporates paragraphs 1 through 34 of this CAFO, as if set forth in this paragraph.

36. For the renovation project described in Paragraph 30, Respondent failed to clean the work area until no dust, debris or residue remains after the renovation has been completed, in accordance with 40 C.F.R. § 745.85.

37. Respondent’s failure to ensure that after completing the renovation, the

work area was cleaned until no dust, debris, or residue remains constitutes a violation under 40 C.F.R. § 745.85(a)(5), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 2 – Failure to Document that all Individuals Working on Behalf of the Firm are either Certified Renovators or Trained by a Certified Renovator

38. Complainant incorporates paragraphs 1 through 34 of this CAFO, as if set forth in this paragraph.

39. For the renovation project described in Paragraph 30, Respondent failed to retain and make available to EPA all records necessary to demonstrate compliance with Subpart E for a period of 3 years following completion of the renovations, in accordance with 40 C.F.R. § 745.86(a) and 15 U.S.C. § 2689. Specifically, Respondent failed to retain records documenting that all renovators assigned to the renovation project were certified pursuant to 40 C.F.R. § 745.86(b)(6) and that a certified renovator performed on-the-job training for workers pursuant to 40 C.F.R. § 745.86(b)(6).

40. Respondent's failure to document that all individuals working on behalf of the firm were certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, constitutes a violation of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. §§ 2614 and 2689.

Civil Penalty

41. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$4,200. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,200 civil penalty for the TSCA violations by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
R5hearingclerk@epa.gov

Craig Meredith (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
meredith.craig@epa.gov
and
R5lecab@epa.gov

Sarah Baehr (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
baehr.sarah@epa.gov

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

45. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

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

addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

47. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: baehr.sarah@epa.gov (for Complainant), and rollwithitpaintingrepair@yahoo.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

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

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

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

52. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

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


54. Each person signing this agreement certifies that he or she has the authority to sign

for the party whom he or she represents and to bind that party to its terms.

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


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

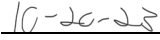
**Consent Agreement and Final Order
In the Matter of: Roll With It Painting & Repair
Docket No.: TSCA-05-2024-0003**



Gerald Writesel,

Owner

 Roll With It Painting & Repair



Date

**Consent Agreement and Final Order
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Docket No.: TSCA-05-2024-0003**

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

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Final Order

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

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