

**FILED**

**September 12, 2023**

**1:53PM**

**U.S. EPA REGION 7  
HEARING CLERK**

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of:**

Davis Contracting LLC

**Respondent**

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**Docket No. TSCA-07-2023-0137**

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Davis Contracting LLC (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

**Parties**

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

3. Respondent is Davis Contracting LLC, a business/limited liability company in good standing under the laws of the state of Nebraska.

**Statutory and Regulatory Background**

4. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended

TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

5. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of target housing. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator of EPA promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to TSCA include recordkeeping and reporting requirements to insure effective implementation.

6. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

7. The regulations set forth at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, including the Renovation, Repair, and Painting Rule, require that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin, establish work practice standards for renovations that disturb painted surfaces in target housing and child-occupied facilities and requires that firms and individuals performing, offering, or claiming to perform such renovations are properly trained and obtain EPA certification.

8. The requirements set forth in the regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R. § 745.82.

9. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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, 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, ceilings, 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.

10. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

11. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

12. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorize a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$46,989 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 16, 2023.

### **General Factual Allegations**

15. On or about December 15, 2021, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection of Respondent’s Renovation, Repair, and Painting (RRP) records to evaluate Respondent’s compliance with TSCA and the requirements of RRP Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on January 10, 2022. The Respondent’s business is located at 2611 Florence Blvd. in Omaha, Nebraska.

16. Respondent is, and at all times referred to herein was, a business in the state of Nebraska as Davis Contracting LLC.

17. Respondent, at all times referred to herein, was a “person” and “firm” as defined by 40 C.F.R. § 745.83.

18. At the time of the EPA inspection, and at all times relevant to this Consent Agreement and Final Order, Respondent was engaged in “renovations” as defined by 40 C.F.R. § 745.83.

19. At all times relevant to this Consent Agreement and Final Order, Respondent’s renovations were “renovations for compensation” per 40 C.F.R. § 745.82(a).

20. At all times relevant to this Consent Agreement and Final Order, the following properties (“Properties”) were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17):

- (a) 620 Meadow Road in Omaha, Nebraska. This property was constructed in 1962;
- (b) 2233 Colfax Street in Blair, Nebraska. This property was constructed in 1966; and
- (c) 6241 Underwood Avenue in Omaha, Nebraska. This property was constructed in 1940.

21. As a result of the EPA inspection and additional information obtained by the agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E, and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activities at the Property.

### **Allegations of Violation**

22. Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder as follows:

#### **Count 1**

23. The facts stated in Paragraphs 15 through 21 above are herein incorporated.

24. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA in target housing or child-occupied facilities.

25. The EPA inspection revealed that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Properties.

26. Respondent’s failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Properties is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Therefore, under 40 C.F.R. § 745.87(a), Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 2 - 4

27. The facts stated in Paragraphs 15 through 21 above are herein incorporated.

28. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

29. The EPA inspection revealed that Respondent failed to assign a certified renovator to the renovation performed at the Properties.

30. Respondent's failure to assign a certified renovator to the renovations at the Properties is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 5 - 7

31. The facts stated in Paragraphs 15 through 21 above are herein incorporated.

32. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation.

33. Pursuant to 40 C.F.R. § 745.86(b)(6), one of the records that must be retained for inspection is documentation of compliance with the requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for all workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

34. The EPA inspection revealed that Respondent failed to prepare and retain records at the Properties as required by 40 C.F.R. §§ 745.86(a) and 745.86(b)(6).

35. Respondent's failure to prepare and retain records is a violation of 40 C.F.R. § 745.86(a) and 745.86(b)(6). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 7-10

36. The facts stated in Paragraphs 15 through 21 above are herein incorporated.

37. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than sixty (60) days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA pamphlet titled

*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools.*

38. The EPA inspection revealed that Respondent failed to provide the pamphlet to the owners of the Properties.

39. Respondent's failure to provide the pamphlet to the owner of the Properties is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

### **CONSENT AGREEMENT**

40. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

41. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

42. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

43. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: [Trotter.Jennifer@epa.gov](mailto:Trotter.Jennifer@epa.gov) (for Complainant) and [tweidemann@woodsaitken.com](mailto:tweidemann@woodsaitken.com) (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

### Penalty Payment

44. EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) and has determined that based on substantiated ability to pay information, the appropriate penalty for the violations is thirty-two thousand one-hundred twenty-three dollars (\$32,123.00) to be paid in installments. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a [mitigated] civil penalty of thirty-two thousand one-hundred twenty-three dollars (\$32,123.00), plus interest of one thousand three hundred twenty-two dollars and forty-four cents (\$1,322.44) over a period of thirty-two months for a total payment of [penalty + interest] thirty-three thousand four hundred forty-five dollars and forty-four cents (\$33,445.44). The total payment shall be paid in monthly payments of one thousand forty-five dollars and seventeen cents (\$1,045.17). The first payment must be received at the address below within thirty (30) days of the effective date of the Final Order. Each subsequent payment shall be paid thirty (30) days after the previous payment. Each penalty payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979078  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

45. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
*R7\_Hearing\_Clerk\_Filings@epa.gov*; and

Jennifer Trotter, Attorney  
*Trotter.jennifer@epa.gov*

46. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Effect of Settlement and Reservation of Rights**

47. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

48. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

49. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

50. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

51. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

52. This Consent Agreement and Final Order 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).

### **General Provisions**

53. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

54. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

55. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

56. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**

**DAVIS CONTRACTING LLC**

  
\_\_\_\_\_  
Signature

8-30-23  
\_\_\_\_\_  
Date

Julius Davis  
\_\_\_\_\_  
Printed Name

Owner  
\_\_\_\_\_  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Date

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Jennifer Trotter  
Office of Regional Counsel

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Date

**FINAL ORDER**

Pursuant to Section 16(a) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**  
(For EPA Use Only)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Davis Contracting LLC, EPA Docket No. TSCA-07-2022-0137, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Jennifer Trotter  
Office of Regional Counsel  
*Trotter.Jennifer@epa.gov*

Christine Hoard  
Enforcement and Compliance Assurance Division  
*Hoard.Christine@epa.gov*

Milady Peters  
Office of Regional Counsel  
*Peters.Milady@epa.gov*

Copy via Email to Respondent:

Todd Weidemann, Attorney at Law  
Woods Aitken LLP  
10250 Regency Circle #525  
Omaha, Nebraska 68114  
*tweidemann@woodsaitken.com*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Regional Hearing Clerk