

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Blue Ridge Classic Painting, LLC.	:	U.S. EPA Docket No. TSCA-03-2019-0074
28 Valley View Avenue	:	
Mount Sydney, Virginia 24467	:	Proceeding under Sections 16(a) and 409 of the
	:	Toxic Substances Control Act, 15 U.S.C. Section
Respondent.	:	2615(a)
	:	
211-219 W. King Street	:	
Strasburg, Virginia 22657	:	
	:	
Target Housing.	:	

U.S. EPA-REGION 3-RHC
FILED-2JUL2019AM10:58

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Blue Ridge Classic Painting, LLC. (“Respondent”) (collectively the “Parties”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. TSCA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under TSCA for the violations of the “Residential Property Renovation” regulations promulgated at 40 C.F.R. 745, Subpart E alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The U.S. Environmental Protection Agency and the Regional Administrator or Regional Judicial Officer have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.
5. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(5).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. 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.”

14. 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.”
15. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”
16. In 2017, Respondent disturbed painted surfaces at 211-219 W. King Street, Strasburg, Virginia.
17. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “firm” who performed “renovation[s]” at 211-219 W. King Street, Strasburg, Virginia, as those terms are defined at 40 C.F.R. § 745.83.
18. The housing located at 211-219 W. King Street, Strasburg, Virginia was constructed prior to 1978 and is “target housing” as that term is defined in Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
19. Respondent’s conduct described in paragraph 16 constituted a renovation for compensation under 40 C.F.R. § 745.82(a) and was subject to the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.

Alleged Violations

Count I

Failure to Obtain Firm Certification to Perform Renovations

20. The allegations of Paragraphs 1 through 19 above of this Consent Agreement are incorporated herein by reference.
21. 40 C.F.R. § 745.81(a)(2)(ii) requires that firms that perform renovations for compensation in target housing must apply to EPA for certification.
22. Respondent failed to obtain firm certification from EPA prior to performing the 2017 renovations for compensation at 211-219 W. King Street, Strasburg, Virginia.
23. Respondent violated 40 C.F.R. § 745.81(a)(2)(ii) by failing to obtain firm certification from EPA prior to performing renovations for compensation.

24. In failing to comply with 40 C.F.R. § 745.81(a)(2)(ii), Respondent is subject to the assessment of penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count II
Failure to Assign Certified Renovator

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.
26. 40 C.F.R. § 745.81(a)(3) requires that only renovators who are certified in accordance with § 745.90(a) may direct renovations and only certified renovators or individuals trained in accordance with § 745.90(b)(2) may perform renovations unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).
27. Respondent's 2017 renovations at 211-219 W. King Street, Strasburg, Virginia did not qualify for one of the exceptions identified in 745.82(a) or (c) and were neither directed by renovators certified in accordance with § 745.90(a) nor performed by certified renovators or individuals trained in accordance with § 745.90(b)(2).
28. Respondent violated 40 C.F.R. § 745.81(a)(3) by performing renovations without renovators who were certified in accordance with § 745.90(a) and/or individuals who were trained in accordance with § 745.90(b)(2).
29. In failing to comply with 40 C.F.R. § 745.81(a)(3), Respondent is subject to the assessment of penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count III
Failure to provide an EPA-approved lead hazard information pamphlet

30. The allegations of Paragraphs 1 through 29 above of this Consent Agreement are incorporated herein by reference.
31. 40 C.F.R. § 745.84(a)(1) requires that 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 a pamphlet, as defined in 40 C.F.R. § 745.83 ("the pamphlet") and either obtain, from the owner, a written acknowledgment that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.
32. Respondent neither provided the pamphlet before beginning renovations for compensation at 211-219 W. King Street, Strasburg, Virginia, in 2017 nor obtained a written acknowledgment / certificate of mailing that the owner had received the pamphlet.

33. Respondent violated 40 C.F.R. § 745.84(a)(1) by failing to provide the pamphlet and obtain a written acknowledgment / certificate of mailing that the owner had received the pamphlet before beginning renovations for compensation.
34. In failing to comply with 40 C.F.R. § 745.84(a)(1), Respondent is subject to the assessment of penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count IV
Failure to retain records

35. The allegations of Paragraphs 1 through 34 above of this Consent Agreement are incorporated herein by reference.
36. 40 C.F.R. § 745.86(a) requires that Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations for a period of 3 years following completion of the renovation.
37. Respondent failed to make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations for the 2017 renovations at 211-219 W. King Street, Strasburg, Virginia.
38. Respondent violated 40 C.F.R. § 745.86(a) by failing to make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations.
39. In failing to comply with 40 C.F.R. § 745.86, Respondent is subject to the assessment of penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CIVIL PENALTY

40. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of two-thousand three hundred and seventy-eight dollars (\$2,378) which Respondent shall be liable to pay in accordance with the terms set forth below.
41. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda

addressing EPA's civil penalty policies to account for inflation.

42. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2019-0074.
- b. All checks shall be made payable to the "United States Treasury."
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Alison M. Debes
Assistant Regional Counsel
U.S. EPA, Region III
3RC60
1650 Arch Street
Philadelphia, PA 19103-2029
Debes.Alison@EPA.gov

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

44. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date

stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

45. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
46. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
47. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
48. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

49. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
50. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in

such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

51. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

52. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

53. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under TSCA the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

54. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

55. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

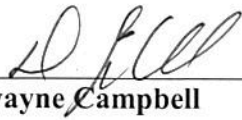
ENTIRE AGREEMENT

56. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: Blue Ridge Classic Painting, LLC.
EPA Docket No. TSCA-03-2019-0074

For Respondent: Blue Ridge Classic Painting, LLC.

Date: 5/4/19


By: 
Dewayne Campbell
Owner

In Re: Blue Ridge Classic Painting, LLC.
EPA Docket No. TSCA-03-2019-0074

For the Complainant:


After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JUN 12 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 6/4/19

By: 
Alison M. Debes
Senior Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Blue Ridge Classic Painting, LLC.
28 Valley View Avenue
Mount Sydney, Virginia 24467**

Respondent.

EPA Docket No. TSCA-03-2019-0074

FINAL ORDER

U.S. EPA-REGION 3-RHC
FILED-2JUL2019AM10:58

**Proceeding under Toxic Substances
Control Act Section 16(a) of the Toxic
Substances Control Act, 15 U.S.C.
Section 2615(a)**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Blue Ridge Classic Painting, LLC., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, dated August 2010 ("LBP Consolidated ERP") and the statutory factors set forth in *Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B)*.

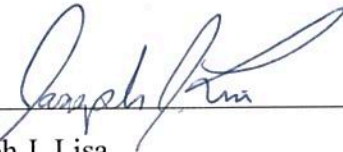
NOW, THEREFORE, PURSUANT TO pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of two thousand three hundred seventy-eight dollars (\$2,378) in accordance with the payment provisions set forth in the Consent Agreement and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

July 2, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of: :
: :
Blue Ridge Classic Painting, LLC. : U.S. EPA Docket No. TSCA-03-2019-0074
28 Valley View Avenue : :
Mount Sydney, Virginia 24467 : Proceeding under Section 16(a) and 409 of the
: Toxic Substances Control Act, 15 U.S.C. Section
Respondent. : 2615(a)
: :
211-219 W. King Street : :
Strasburg, Virginia 22657 : :
: :
Target Housing. : :

CERTIFICATE OF SERVICE

I certify that on JUL 02 2019, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, to:

Dewayne Campbell
Blue Ridge Classic Painting, LLC.
28 Valley View Avenue
Mount Sydney, Virginia 24467

Kevin M. Rose
BotkinRose PLC
3190 Peoples Drive
Harrisonburg, VA 22801

Copies served via Hand Delivery or Inter-Office Mail to:

Alison M. Debes
Assistant Regional Counsel
ORC – 3RC60
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Annie Hoyt
Environmental Scientist
3LC41
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: JUL 02 2019

Berwin Espante
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 7017 2620 0000 9143 2989
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