

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
:  
In the Matter of  
:

**Kascon, LLC,**  
:

Respondent.  
:  
:

Proceeding under Section 16(a) of  
the Toxic Substances Control Act  
:  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2017-9273

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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), 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 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and

22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Kascon, LLC (“Kascon” or “Respondent”).
2. Respondent’s primary place of business is located at 2930 Mason Road, Waterville, New York 13480.
3. Respondent is a general contractor engaged in the business of providing environmental services for asbestos detection and removal, mold remediation, lead detection and removal, and home improvement projects.
4. Respondent is a “firm,” as that term is defined at 40 C.F.R. § 745.8, with EPA Certification No. NAT-F111844-1, valid from 4/2/2013 to 4/16/2018.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745
6. On or about August 5, 2015, duly authorized inspectors of the United States Environmental Protection Agency, Region 2 (“EPA”), conducted an inspection and records review of Joseph Priore Construction (“JPC”), (the “Inspection”). During the course of the Inspection, EPA learned that JPC subcontracted to Respondent all asbestos and lead-based paint work associated with a project at the John F. Hughes Elementary School in Utica, New York (the “Property”), a child-occupied facility, as that term is defined at 40 C.F.R. § 745.83.
7. Respondent conducted lead-based paint renovations at the Property from April 8, 2015 through July 19, 2015.

8. On or about August 26, 2015 and February 10, 2016, EPA issued Information Request Letters (“IRLs”) to Respondent requesting information about the school project and the activities involving lead-paint that Respondent had conducted at the Property.

9. On or about September 25, 2015 and March 15, 2016, Respondent submitted responses to the respective IRLs which indicated that Respondent had performed work subject to the requirements set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (RRP) Rule”) at the Property.

10. Based in part on Respondent’s response to the second IRL, EPA determined that Respondent had failed, within sixty days prior to beginning renovation activities, to provide the owner or an adult representative of the child-occupied facility with the EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.84(c)(1)(i) and (ii).

11. EPA further determined that Respondent had failed to provide the parents and/or guardians of children using the child-occupied facility with the EPA-approved lead hazard information pamphlet, information describing the general nature and information on how interested parents and guardians of children frequenting the child-occupied facility can review a copy of the records required by §745.86(c) and (d) or obtain a copy from the renovation firm at no cost, required by §745.84(c)(2) no more than sixty days before beginning renovation activities and in the manner prescribed by §§745.84(c)(2)(i) and (ii).

12. EPA further determined that Respondent had failed to establish and maintain records, or make available such records, as required by 40 C.F.R. § 745.87(b).

13. On April 26, 2017 and July 7, 2017, EPA and Respondent held informal pre-filing settlement conferences at Respondent’s request to discuss EPA’s findings with regard to Respondent’s failures to comply with TSCA and the RRP Rule before and during the renovation at the Property.

14. As a result of the informal settlement conferences, the parties agreed to enter into this Consent Agreement.

### CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.
2. Respondent certifies that it is currently in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745.
3. For the purposes of this Consent Agreement, Respondent: (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations described in the “Findings of Fact and Conclusions of Law” section, above; and (b) neither admits nor denies the specific factual allegations contained in the “Findings of Fact and Conclusions of Law” section, above.
4. Respondent shall pay, by cashier’s or certified check or electronic fund transfer, a civil penalty in the amount of **SEVEN THOUSAND ONE HUNDRED TWENTY-SIX DOLLARS (\$7,126)** due on or before **30 calendar days** from the date of signature of the Final Order at the end of this document.
5. If a payment is made by cashier’s or certified check, each such payment shall be payable to the "Treasurer of the United States of America." Each check shall be identified with

a notation of the name and docket number of this case, as set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to pay by electronic fund transfer (“EFT”), Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read “**D68010727  
Environmental Protection Agency**”
- 6) Name of Respondent: **Kascon, LLC**
- 7) Case Docket Number TSCA-02-2017-9273

6. Payment must be received at the address listed in Paragraph 5, above, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which such payment must be received shall hereafter be referred to as the “due date”).

a. Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection or other appropriate action.

b. Further, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

7. The civil penalties and any stipulated penalties provided for herein are “penalt[ies] within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

8. Respondent has developed a Compliance Plan addressing the following broad categories of the RRP regulations and the lead-based paint abatement regulations codified at 40 C.F.R. Part 745 subparts E and L:

- a. Maintaining appropriate firm certification(s) from USEPA;
- b. Training of Kascon employees, when applicable;
- c. Creation and retention of records;
- d. Compliance with work practice standards for renovation and abatement projects; and
- e. Management of general contractor/subcontractor roles in renovation and abatement projects.

EPA has approved the Compliance Plan, appended to this CA/FO as Exhibit 1, and it is incorporated herein.

9. Respondent shall implement the Compliance Plan at all child-occupied facilities and/or target housing at which Respondent performs work subject to the provisions of 40 C.F.R. Part 745. Implementation of the Compliance Plan is intended as an adjunct to the requirements of 40 C.F.R. Part 745. Adherence to the provisions of the Compliance Plan and compliance with the provisions of this Consent Agreement with regard to its implementation and use shall not be

a substitute for compliance with the provisions of 40 C.F.R. Part 745 nor a defense to the failure to do so.

10. Respondent shall submit reports to EPA documenting its use and implementation of the Compliance Plan (CP Reports) in accordance with the following terms:

- a. Respondent shall submit CP Reports to EPA quarterly for a period of one year commencing ninety (90) days from the date of signature of the Final Order.
- b. Each report shall summarize compliance activities performed in accordance with the Compliance Plan during the preceding quarter. In addition, for RRP work conducted, the report shall indicate the number of RRP renovations undertaken during the relevant quarter. In the event that no work subject to the provisions of 40 C.F.R. Part 745 is undertaken in a given quarter, Respondent shall so state in the CP Report for that quarter.
- c. The CP Reports shall be sent to the following addressees:

U.S. EPA – Region 2  
 Lead-Based Paint Team  
 2890 Woodbridge Road - MS-225  
 Edison, New Jersey 08837

And

Melva J. Hayden, Esquire  
 Assistant Regional Counsel  
 Office of Regional Counsel  
 U.S. EPA – Region 2  
 290 Broadway – 16<sup>th</sup> Floor  
 New York, New York 10007-1866

- d. Respondent shall be subject to stipulated penalties for the failure to submit the required CP Reports in a timely manner as follows:

i.)	15 – 30 days delinquent	-	\$ 500 per day
ii.)	30 – 45 days delinquent	-	\$1000 per day
iii.)	45 – 60 days delinquent	-	\$1500 per day

All stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of stipulated penalties shall be made in the same manner as prescribed in Paragraphs 5 and 6, above, for payment of the civil penalty. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand.

- e. Each CP Report shall contain the following certification signed by an appropriate corporate official:

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

11. EPA Region 2's Director of Division of Enforcement Compliance and Assistance, may in her sole discretion, reduce or eliminate any stipulated penalty due.

12. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the CP Report as required herein, Respondent shall notify EPA in writing within fourteen (14) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the submission of the CP Report caused by the delay.

Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph

void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such event.

b. If the parties agree that the delay or anticipated delay in the submission of the CP Report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the Delay resulting from such circumstances.

c. In the event that EPA does not agree that a delay in implementing submitting the CP Report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent.

13. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Vickie Pane  
Lead Environmental Engineer  
Pesticides and Toxic Substances Branch – Lead Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
2890 Woodbridge Avenue – MS 225  
Edison, New Jersey 08837

And

Melva J. Hayden, Esquire  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Richard Oliver, COO  
Kascon, LLC  
2930 Mason Road  
Waterville, New York 13480

14. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims described in the Findings of Fact and Conclusions of Law set forth above.
15. Full payment of the penalty described in paragraph 4 shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in paragraphs 10 through 12 in the Findings of Facts and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.
16. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.
17. Respondent consents to the issuance of the accompanying Final Order.
18. Respondent agrees that all terms of settlement are set forth herein.
19. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
20. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

21. The Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

22. Respondent waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

23. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. 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 the regulations promulgated thereunder.

24. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

25. Each party hereto agrees to bear its own costs and fees in this matter.

26. Respondent consents to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.



In the Matter of Kascon, LLC  
Docket Number TSCA-02-2017-9273

**Kascon, LLC**

RESPONDENT:

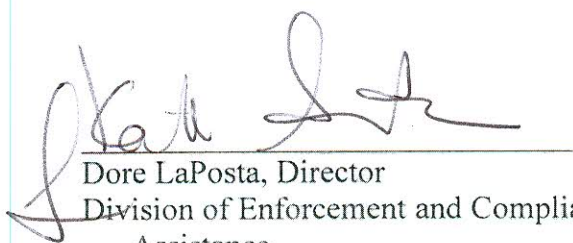
BY: 

NAME: Dennis Keith  
(PLEASE PRINT)

TITLE: Principal

DATE: 9/21/17

COMPLAINANT:



Dore LaPosta, Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: SEP 26 2017



In the Matter of Kascon, LLC  
Docket Number TSCA-02-2017-9273

### FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Kascon, LLC, bearing Docket Number TSCA-02-2017-9273. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

  
Catherine R. McCabe  
Acting Regional Administrator  
U.S. Environmental Protection Agency

DATE: \_\_\_\_\_

9/27/17



In the Matter of Kascon, LLC  
Docket Number TSCA-02-2017-9273

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Dennis Keith, President  
Kascon, LLC  
2930 Mason Road  
Waterville, New York 13480

Richard Oliver, COO  
Kascon, LLC  
2930 Mason Road  
Waterville, New York 13480

Tim Lambrecht, Esquire  
The Wladis Law Firm, PC  
6312 Fly Road  
East Syracuse, New York 13214

Dated: 9/28/17  
New York, New York

A handwritten signature in black ink, appearing to read 'Yongmei', written over a horizontal line.



**“EXHIBIT 1”**

**LEAD PAINT REGULATIONS COMPLIANCE PLAN**

***“TABLE OF CONTENTS”***

**I. Introductory Statement .....1**

**II. Objective .....2**

**III. Applicability .....2**

**IV. Procedures .....2**

**A) Firm Certifications .....3**

**B) Training of KASCON, LLC Employees .....4-6**

**C) Records Retention .....6-7**

**D) Managing General Contractor, Subcontractor Roles for RRP  
    Rules and Lead Abatement Rules Projects .....7-8**

**KASCON, L.L.C.**  
**Environmental Services**

2930 Mason Road  
Waterville, NY 13480

Office: (315) 861-2211  
Fax: (315) 861-2214  
E-mail: kascon@frontiernet.net

**“EXHIBIT 1”**  
**LEAD PAINT REGULATIONS COMPLIANCE PLAN**

**“ATTACHMENTS”**

**ATTACHMENT “A” - “Renovate Right” Pamphlet Delivery Confirmation**

- Record of Tenant Notification Procedures
- Lead Renovation Notice
- Lead Renovation Project Report (Pages 1 thru 3)

**ATTACHMENT “B” - EPA Lead Renovator Certifications**

**ATTACHMENT “C” - EPA Lead Abatement Certifications**

**ATTACHMENT “D” - EPA Notification of Lead-Based Paint Abatement Activities**

- Occupant Protection Plan for Lead Abatement
- Lead Abatement Report

# **“EXHIBIT 1”**

## **LEAD PAINT REGULATIONS COMPLIANCE PLAN**

### **I. Introductory Statement.**

This Lead Paint Regulations Compliance Plan (“the plan”) is being implemented in order to promote compliance by KASCON, LLC with the requirements for Residential Property and Child Occupied Facility Renovation, codified at Title 40 of the Code of Federal Regulations, Part 745, Subpart E, commonly known as the Renovation, Repair, and Painting (RRP) Rule, and Part 745, Subpart L, commonly known as the Abatement Rule. The Plan is designed to help ensure that covered companies and their employees, engaged in renovation activities involving residential “target housing” properties and “Child Occupied Facilities” where lead-based paint is, or may be, present, have the necessary guidance and/or training to conduct renovation activities in compliance with the RRP Rule.

This plan will also show the procedures KASCON, LLC will follow when notifying the EPA of an upcoming Lead Abatement project, creating a “Occupant Protection Plan”, and producing a “Abatement Report” as per 40 CFR 745.227.

## **II. Objective**

The objective of the plan is to ensure KASCON's compliance with the RRP Rule and other federal EPA Lead-Based Paint requirements where applicable. This plan does not address compliance with the residential lead-based paint laws or regulations of other federal, state, or local agencies.

## **III. Applicability**

This plan covers all KASCON employees working on projects involving the Renovation, repair, or abatement of property originally constructed prior to 1978. Note, that in addition to pre-existing residential structures, the conversion of any class of property (e.g., Commercial, Industrial, etc.) constructed prior to 1978 to residential use makes such property subject to the requirements of 40 CFR Part 745 and this plan.

## **IV. Procedures**

This document, created and adopted by KASCON, LLC sets forth procedures which will address the following broad categories of compliance that apply to the rules cited above: A) Updating/renewing the appropriate firm certifications by US EPA; B) Training of KASCON employees, when applicable; and C) Retention of records of compliance.

## **A) Firm Certifications.**

**RRP Rule** – KASCON, LLC has updated its US EPA firm certification for the RRP Rule under certification number NAT-F111844-1, issued on April 02, 2013, which expires on April 16, 2018. Six (6) months prior to our license expiring, the EPA will send a reminder letter alerting us of the expiration date. We then take the necessary steps to renew our license. All renewals are now done electronically at [www2.epa.gov/lead/epa-lead-safe-certification-program](http://www2.epa.gov/lead/epa-lead-safe-certification-program). Our individual Renovators certifications are kept in an electronic file database that is monitored by the KASCON, LLC Office Manager. As expiration dates near, Renovators are scheduled for a “Refresher” class at an EPA accredited training provider. Once training is complete, the proper forms are filed with the EPA so a new certification will arrive with no lapse in certified status for the individual Renovator. These certifications are all applied for electronically now as well.

**Abatement Rule** – KASCON, LLC has updated its US EPA firm certification for the Lead Based Paint Abatement Rule under certification number LBP-16130-1, issued on November 10, 2016, which expires on December 31, 2019. Six (6) months prior to our license expiring, the EPA will send a reminder letter alerting us of the expiration date. We then take the necessary steps to renew our license. All renewals are now done electronically at [www2.epa.gov/lead/epa-lead-safe-certification-program](http://www2.epa.gov/lead/epa-lead-safe-certification-program). Our individual Supervisors certifications are kept in an electronic file database that is monitored by the KASCON, LLC

Office Manager. As expiration dates near, Abatement Supervisors are scheduled for a “Refresher” class at an EPA accredited training provider. Once training is complete, the proper forms are filed with EPA so a new certification will arrive with no lapse in certified status for the individual Supervisor. These certifications are all applied for electronically now as well.

## **B) Training of KASCON, LLC Employees.**

**1. RRP Rule** – As a Prime Contractor / Sub-Contractor, whenever KASCON, LLC undertakes a project where lead renovation work is scheduled, it will assign an RRP Certified Renovator (appropriately trained individual who possesses a current Renovator certificate issued by an EPA accredited training provider) to that project. The assigned renovator to any project will be responsible, in part, for compliance with the RRP Rules for that project, and in that role must perform, and document, a number of specific job functions.

**2. Assigned Renovator** - All of KASCON, LLC’s core employees have been trained and certified by an EPA Certified training facility (See Attachment B). KASCON, LLC also provides annual in-house training/refresher classes for its EPA Certified employees. Having this vast number of employees certified allows KASCON the advantage of being able to place at least one Certified Renovator on all on our jobsites, whether or not there is any lead renovation scheduled for that particular project. If only one KASCON employee on a specific project is a certified renovator, he/she will be responsible for providing on-the-job training concerning Lead-Safe Work Practices required by the RRP Rule to the other KASCON employees. The certified renovator will create a record of this training, and KASCON, LLC will retain that record, as well as the other RRP records of compliance, including, but not

