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**U.S. EPA REGION 1
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)
)
Elite Construction and Remodeling, LLC)
60 North Society Road)
Canterbury, CT 06331)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)

EPA Docket No.
TSCA-01-2024-0008
**CONSENT AGREEMENT
AND
FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (“EPA”), Region 1 (“Complainant”) alleges that Elite Construction and Remodeling, LLC (“Respondent”) violated Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the federal regulations promulgated thereunder set forth at 40 C.F.R. Part 745, Subpart E, as amended (the “Renovation, Repair and Painting Rule” or “RRP Rule”).

This Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes the cause of action described herein, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), at 40 C.F.R. Part 22. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

I. STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (the “Act”) in response to findings that “pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint” and that dust from this lead paint creates significant health problems for children. 45 U.S.C. § 4851. The Act added a new section to TSCA entitled *Subchapter IV – Lead Exposure Reduction* (TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692) to, among other purposes, ensure that “the existence of lead-based paint hazards is taken into account in... [the] renovation of homes and apartments.” 45 U.S.C. § 4851a (4).

2. In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA (*Lead Hazard Information Pamphlet – Renovation of Target Housing*), 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule”).

3. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.” See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(6). As further described below, the RRP Rule sets forth procedures and requirements for, among other things, renovator and renovator firm certifications, records retention, and work practices for renovation, repair, and painting activities in “target housing” and child-occupied facilities, and the establishment and retention of records to document compliance.

4. “Target housing” is “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).” 15 U.S.C. § 2681(17).

5. A “renovator” is “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.” 40 C.F.R. § 745.83.

6. A “firm” is “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.” 40 C.F.R. § 745.83.

7. “Renovation” is “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, and 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. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.” 40 C.F.R. § 745.83.

8. “Minor repair and maintenance activities” means “activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.” 40 C.F.R. § 745.83.

9. Except in specific circumstances not relevant to Respondent or the violations alleged in this CAFO, firms renovating target housing for compensation must, among other requirements:

- i. Obtain EPA certification, pursuant to the procedures outlined in 40 C.F.R. § 745.89, before “perform[ing], offer[ing], or claim[ing] to perform renovations”;
- ii. Ensure all individuals performing renovations are certified renovators or are trained by certified renovators and that a certified is assigned to each renovation;
- iii. Properly contain exterior work areas by covering the ground with plastic sheeting or other impermeable material to collect falling paint debris;
- iv. Retain records demonstrating compliance with the requirements of the RRP

Rule for a period of three years following completion of the renovation.

See 40 C.F.R. §§ 745.81(a)(2) and (3), 745.85(a)(2)(ii)(C), 745.89(a) and (d)(1) and (2), and 745.86(a).

10. It is unlawful for any person to fail to comply with these or any other rules issued under Subchapter IV of TSCA. 15 U.S.C § 2689. *See also* 40 C.F.R. §§ 745.87(a), (b).

11. TSCA Section 16(a) authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA. *See also* 40 C.F.R. § 745.87(d). This amount was amended by the Debt Collection Improvement Act of 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 (“FCPIAA”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and the FCPIAA’s implementing regulations, promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 88 Fed. Reg. 247 (Dec. 27, 2023), which together authorize the assessment of civil administrative penalties of up to \$48,512 for violations that occur after November 2, 2015, for which a penalty is assessed on or after December 27, 2023.

II. GENERAL ALLEGATIONS

12. Respondent is a limited liability company registered with the State of Connecticut in or around 2018, with its principal office located at 60 North Society Road, Canterbury, Connecticut. Respondent performs residential property renovation and carpentry services throughout Connecticut.

13. Thus, Respondent is a “firm,” as defined by 40 C.F.R. § 745.83, and a “person” as defined by the same.

14. Respondent performed a renovation in March 2023 at 55 East Main Street, Mystic, Connecticut (“Mystic Renovation”) that constituted a “renovation” within the meaning

of 40 C.F.R. § 745.83. The Mystic Renovation consisted of removal of exterior painted siding and installation of new siding and gutters.

15. Respondent performed a “renovation for compensation” within the meaning of 40 C.F.R. § 745.83.

16. On March 7, 2023, EPA conducted an inspection of the Mystic Renovation to determine Respondent’s compliance with the RRP Rule.

17. At the time of the inspection of the Mystic Renovation described in paragraph 14 above, Respondent had not obtained firm certification from EPA. Moreover, at the time of the inspection of the Mystic Renovation, there was no certified renovator working at the site.

18. The renovation described in paragraph 14 above, did not constitute minor repair or maintenance activities, or emergency repairs. *See* 40 C.F.R. 745.82(b).

19. The residence listed in paragraph 14 above, was built before 1978, and thus, qualifies as “target housing.” 15 U.S.C. § 2681(17); 40 C.F.R. § 745.103. The residence does not satisfy the requirements for an exemption from the definition of target housing. *See id*, 40 C.F.R. § 745.82.

III. VIOLATIONS

20. EPA has identified the following violations of TSCA and the RRP Rule based on observations made and information received during EPA’s inspection at the Mystic Renovation and other information received by EPA.

21. Each of the four violations alleged below is a violation for which penalties may be assessed pursuant to 15 U.S.C. § 2615.

**COUNT ONE: FAILURE TO ENSURE FIRMS PERFORMING RENOVATIONS
RECEIVED CERTIFICATION FROM EPA**

22. Paragraphs 1 through 21 above, are incorporated by reference as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a)(1), firms performing renovations for compensation must apply to EPA for certification to perform renovations. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in § 745.85. Pursuant to 40 C.F.R. § 745.85(a), renovations must be performed by certified firms using certified renovators as directed by 40 C.F.R. § 745.89.

24. At the time of the Mystic Renovation described in paragraph 14 above, Respondent was not a certified firm pursuant to the RRP Rule.

25. Thus, Respondent failed to obtain firm certification before performing, offering, or claiming to perform a renovation in target housing, in violation of 40 C.F.R. § 745.89(a) and 40 C.F.R. 745.81(a)(2)(ii).

**COUNT TWO: FAILURE TO ENSURE CERTIFIED RENOVATORS PERFORM
RENOVATIONS AND ARE DIRECTED BY CERTIFIED RENOVATORS**

26. Paragraphs 1 through 25, above, are incorporated by reference as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 745.81(a)(3), on or after April 22, 2010, all renovations

must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c). Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations have the responsibility to ensure that all individuals performing renovations on behalf of a firm are certified renovators in accordance with 40 C.F.R. § 745.90. 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 of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

28. At the time of the inspection, Respondent had not assigned a certified renovator to the Mystic Renovation.

29. Thus, Respondent failed to ensure that the renovation performed by the firm was performed by a certified renovator or a person trained by a certified renovator, in violation of 40 C.F.R. §§ 745.81(a)(3) and 745.89(d)(1) and (d)(2).

COUNT THREE: FAILURE TO ENSURE RENOVATIONS ARE PERFORMED IN ACCORDANCE WITH WORK PRACTICE STANDARDS

30. Paragraphs 1 through 29 above are incorporated by reference as if fully set forth herein.

31. Pursuant to 745.85(a)(2)(ii)(C), a firm performing a renovation must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

32. At the time of the inspection, Respondent had not covered the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris while performing the Mystic Renovation.

33. Thus, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

COUNT FOUR: FAILURE TO KEEP NECESSARY RECORDS

34. Paragraphs 1 through 33 above are incorporated by reference as if fully set forth herein.

35. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations on target housing must retain records necessary to demonstrate compliance with the RRP Rule for a period of three years following the completion of the renovations. The requirements of the required records are listed in 40 C.F.R. § 745.86(b).

36. At the time of the inspection, Respondent had not created and retained the required records to document its compliance with the RRP Rule with respect to the Mystic Renovation.

37. Thus, Respondent failed to retain records for three years for renovations performed at target housing, in violation of 40 C.F.R. § 745.86(a).

IV. TERMS OF SETTLEMENT

38. Without admitting or denying the factual allegations in Section III of this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

39. Respondent certifies that it is currently operating and will continue to operate in compliance with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E. Specifically, Respondent shall:

- i. Obtain firm certification pursuant to the RRP Rule prior to performing a renovation, in compliance with 40 C.F.R. § 745.89(a) and 40 C.F.R. 745.81(a)(2)(ii).
- ii. Ensure that all individuals performing renovations on behalf of the firm are certified renovators, in accordance with 40 C.F.R. § 745.90, 40 C.F.R. § 745.81(a)(3), 40 C.F.R. § 745.81(a)(3) and § 745.89(d)(1) and (d)(2);
- iii. Comply with the work practice standards in § 745.85. Specifically, cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, in accordance with 40 C.F.R. § 745.85(a)(2)(ii)(C); and
- iv. Retain records to demonstrate compliance with the RRP Rule for renovations performed on target housing for a period of three years following the

renovations, in accordance with 40 C.F.R. § 745.86(a).

40. Respondent agrees to pay a civil penalty of \$39,368 in six (6) installment payments within six (6) months of the effective date of this CAFO. With the interest on the balance owed beyond 30 days of the effective date of this CAFO (\$874.84) spread equally across all payments, each payment shall be in the amount of \$6,707.14. The first payment shall be made within 30 days of the effective date of this CAFO. Each subsequent payment shall be due in successive 30-day intervals, such that the sixth and final payment is submitted within six (6) months of the effective date of this CAFO. The Final Order shall become effective on the date it is filed with the Regional Hearing Clerk. The installment payment plan was based upon Respondent's inability to pay the entire penalty amount within 30 days without experiencing undue financial hardship, and was determined by EPA to be in the best interest of the United States.

41. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

42. When making a payment, Respondent shall:

- i. Identify every payment with the Respondent's name (i.e., "Elite Construction and Remodeling, LLC") and the docket number of this Agreement, TSCA-01-2024-0008.
- ii. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Via electronic mail to:
r1_hearing_clerk_filings@epa.gov

and

Jaegun Lee, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Via electronic mail to:
Lee.Jaegun@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

43. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to make any payment in accordance with the terms of this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- i. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed

Penalty is not paid in full within 30 days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide the Respondent adequate incentive for timely payment.

- ii. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first 30-day period after the Filing Date. Additional handling charges will be assessed every 30 days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- iii. Late Payment Penalty. A late payment penalty of 6 percent per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than 90 days. Any such amounts will accrue from the Filing Date.

44. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- i. Refer the debt to a credit reporting agency or a collection agency, per 40

C.F.R. §§ 13.13 and 13.14.

- ii. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- iii. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- iv. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

45. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

46. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

47. Respondent admits that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

48. Respondent waives its right to a judicial or administrative hearing on any issue of

law or fact set forth in this CAFO and waives its right to appeal the Final Order.

49. The provisions of this CAFO shall be binding on Respondent and Respondent's successors and assigns.

50. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

51. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

52. Each undersigned representative of the parties to this CAFO certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

53. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter, including financial information, was at the time of submission true, accurate and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information,

under 18 U.S.C. § 1001.

54. The parties agree that Respondent and EPA may execute this CAFO by electronic signature. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the Parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form. EPA has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following addresses: jbausch@uks.com and jfertman@ctelite.org. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

55. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

56. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.



Judd Fertman, Owner
Elite Construction and Remodeling, LLC

Date: 6/10/24

For Complainant:

James Chow, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Dated via electronic signature

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Elite Construction and Remodeling, LLC is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein.

The terms of the Consent Agreement shall become effective on the date that the CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

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

Dated via electronic signature