

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

September 22, 2023 @ 2:25 pm
USEPA – Region II
Regional Hearing Clerk

In the Matter of

Buffalo Municipal Housing Authority

Respondent

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

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. TSCA-02-2023-9275

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"), 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 ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2689. . . of this title [Section 409 of TSCA, 15 U.S.C. §2689] shall be liable to the United States for a civil penalty. . . ." EPA alleges that the Buffalo Municipal Housing Authority (hereinafter "BMHA" or "Respondent") violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, by failing to comply with Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Act"), 42 U.S.C. § 4852d, and the federal regulations promulgated pursuant to TSCA and the Act at 40 C.F.R. Part 745, Subpart F ("Lead

Disclosure Rule”). Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (“Complainant”) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Respondent (collectively, the “Parties”) agree, following a series of settlement conferences, that settling this matter by entering into this 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.

STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Act in response to findings that low-level lead poisoning was widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of household dust containing lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be considered in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

2. In 1996, EPA promulgated regulations to implement Section 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d, and Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (referred to as the “Disclosure Rule” or “Lead Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule” or the “Abatement Rule”). 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 (the “Abatement Rule”). The revised Subpart E is now known as the Renovation, Repair, and Painting (“RRP”) Rule.

4. Pursuant to TSCA Section 401(17), the housing stock addressed by the Disclosure Rule and the RRP Rule is Target Housing, defined as 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).

5. The Disclosure Rule defines Lessor as any entity that offers Target Housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

6. The Disclosure Rule, in pertinent part, requires Lessors of Target Housing to provide lessees with an EPA-approved lead hazard information pamphlet and include within the lease or as an attachment to the lease the following elements:

- a. a Lead Warning Statement;
- b. a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof;
- c. a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available;
- d. a statement by the lessee affirming receipt of the information set out in §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet; and
- e. signatures and dates of signatures of lessors and lessees certifying the accuracy of their statements regarding lead-based paint and/or lead-based hazards.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(4) and 745.113(b)(6).

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirements of the Disclosure Rule is a violation of TSCA §§ 408 and 409, 15 U.S.C. §§ 2688 and 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA §§ 408 and 409, specific civil penalties apply under TSCA § 16.

8. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in Target Housing and child-occupied facilities, and the establishment and retention of records to document compliance.

9. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in Target Housing.

10. For purposes of complying with Section 406(b) of TSCA, 15 U.S.C. § 2686(b), and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term Pamphlet as used herein means the EPA-approved pamphlet developed under TSCA § 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (“Renovate Right”) (EPA # 740-K-10-001, revised September 2011).

11. 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.

12. 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. Renovation includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of painted doors, surface restoration, window repair, surface preparation activity (such as

sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (*e.g.*, walls, ceiling, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

13. Pursuant to 40 C.F.R. § 745.83, the term “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 twenty (20) square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

14. Pursuant to 40 C.F.R. § 745.83, the term “Renovator” means 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 by an EPA- authorized State or Tribal program.

15. Under the RRP Rule, Firms performing Renovations in Target Housing are, among other things, required to:

- a) Obtain an EPA certification for the Firm prior to performing Renovations;
- b) Assign a certified renovator, and ensure that a certified renovator either performs the Renovation or directs a properly trained worker to perform the Renovation;
- c) Provide the Pamphlet to the owner and adult occupant (if the owner does not occupy the unit) before Renovation activities begin and obtain written verification that the Pamphlet was provided;
- d) Perform Renovations in compliance with applicable work practice standards for any renovation, repair, and painting activities conducted; and,
- e) Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a), 745.89(d), 745.85, and 745.86(a)-(b).

16. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. Respondent is the Buffalo Municipal Housing Authority.

18. Respondent's primary place of business is located at 300 Perry Street, Buffalo, New York 14204.

19. Respondent is a public housing authority formed under the laws of the State of New York for the purpose of assisting its residents in attaining and maintaining a high standard for their quality of life.

20. Among the public housing Respondent administers are Frederick Douglass Towers, 515 Clinton Street, Buffalo, New York, and Shaffer Village Apartments, 110 Blum Street, Buffalo, New York. The Frederick Douglass Towers and each of the buildings in the Shaffer Village Apartments were built prior to 1978.

21. Frederick Douglass Towers and Shaffer Village Apartments are Target Housing.

22. As part of its mission, Respondent leases apartment units in Frederick Douglass Towers and Shaffer Village Apartments for occupancies greater than one hundred (100) days. In so doing, BMHA staff sign the leases and lease renewals, as "Management" of the apartment units at Frederick Douglass Towers and Shaffer Village Apartments and are tasked with having the documents signed by tenants.

23. At all times relevant, BMHA is and was a Lessor subject to the Disclosure Rule.

24. In June 2019, a duly-credentialed EPA inspector conducted Compliance Evaluation Inspections ("CEI") pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, at Respondent's Frederick Douglas Towers and Shaffer Village Apartments. During these two inspections, the EPA inspector collected information relevant to Respondent's compliance with the Disclosure Rule, including leases,

lead-based paint testing and evaluation reports prepared for several apartment units and common areas.

25. During EPA’s review of the records collected, EPA found that lead-based paint testing had been conducted at Shaffer Village Apartments in 2001 and a Report was prepared in 2004. The 2004 Lead Based Paint Testing Report revealed the presence of lead-based paint in kitchens and basements as well as in various window and door components at the Shaffer Village apartments. However, no evidence or results of such testing were referenced in any of the lessor disclosure forms reviewed.

26. During EPA’s June 2019 inspections, EPA’s inspector provided compliance assistance to BMHA staff with respect to the Disclosure Rule and RRP Rule.

27. Based on the aforementioned EPA inspections and the documentation obtained and reviewed by EPA, EPA determined that Respondent, between at least December 1, 2017 and July 1, 2019, had repeatedly violated the Disclosure Rule when leasing multiple apartment units in the Frederick Douglass Towers and Shaffer Village Apartments by failing to disclose to lessees the presence of any known lead-based paint, by failing to provide lessees with any records or reports available to the lessor pertaining to lead-based paint, and by failing to include all required elements within the leases or as an attachment to the leases for each unit, including listing on the Lessor Disclosure Form the records or reports pertaining to lead-based paint that are available to the Lessor. Specifically, EPA documented the following violations of the Lead Disclosure Rule committed by Respondent:

LEAD DISCLOSURE RULE VIOLATIONS

<u>Lessee Address</u>	<u>Date of Lease</u>	<u>Description of Violation</u>	<u>Statutory and Regulatory Citation of Violation</u>
Frederick Douglass Towers Apt 107 Apt 109	April 1, 2018 August 1, 2018	Failure to include in lease a statement disclosing the presence of known lead-based paint or lead-based paint hazards or a statement indicating no knowledge of the presence of lead-based paint.	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(2)

<p>Shaffer Village Apartments South Lane Apt 3 South Lane Apt 7 South Lane Apt 8 South Lane Apt 9 South Lane Apt 11 South Lane Apt 14 South Lane Apt 15 South Lane Apt 16 Lower East Apt 3 Lower East Apt 5</p>	<p>January 1, 2019 October 26, 2018 December 1, 2018 March 19, 2019 March 25, 2019 January 11, 2019 December 1, 2017 September 18, 2018 October 1, 2018 July 3, 2018</p>	<p>Failure to disclose to the lessee the presence of any known lead-based paint or lead-based paint hazards in the housing being leased.</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.107(a)(2)</p>
<p>Frederick Douglass Towers Apt 107 Apt 109 Apt 301 Apt 604</p>	<p>April 1, 2018 August 1, 2018 July 1, 2018 July 1, 2019</p>	<p>Failure to include in lease a list of any records or reports available to the lessor that pertain to the presence of any known lead-based paint and/or lead-based paint hazards that have been provided to the lessee or a statement indicating no such records or reports exist.</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(3)</p>
<p>Shaffer Village Apartments South Lane Apt 3 South Lane Apt 7 South Lane Apt 8 South Lane Apt 9 South Lane Apt 11 South Lane Apt 14 South Lane Apt 15 South Lane Apt 16 Lower East Apt 3 Lower East Apt 5</p>	<p>January 1, 2019 October 26, 2018 December 1, 2018 March 19, 2019 March 25, 2019 January 11, 2019 December 1, 2017 September 18, 2018 October 1, 2018 July 3, 2018</p>	<p>Failure to provide the lessee with any records or reports available to the lessor pertaining to the presence of lead-based paint or lead-based paint hazards in the target housing being leased.</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.107(a)(4)</p>
<p>Frederick Douglass Towers Apt 107 Apt 109 Apt 301 Apt 505 Apt 604</p> <p>Shaffer Village Apartments South Lane 7 South Lane 8 South Lane 11 South Lane 16</p>	<p>April 1, 2018 August 1, 2018 July 1, 2018 April 9, 2019 July 1, 2019</p> <p>October 26, 2018 December 1, 2018 March 25, 2019 September 18, 2018</p>	<p>Failure to include in lease a statement by lessee affirming receipt of information of presence of Lead-Based Paint, list of reports or records of Lead-Based Paint and the Lead-Based Paint Information Pamphlet</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(4)</p>

<p>Frederick Douglass Towers Apt 107 Apt 109 Apt 505 Apt 604</p> <p>Shaffer Village Apartments South Lane 7 South Lane 8 South Lane 9 South Lane 11 South Lane 16</p>	<p>April 1, 2018 August 1, 2018 April 9, 2019 July 1, 2019</p> <p>October 26, 2018 December 1, 2018 March 19, 2019 March 25, 2019 September 18, 2018</p>	<p>Failure to include signatures and dates of signatures of lessors, agents and lessees certifying the accuracy of their statements regarding Lead-Based Paint and/or Lead- Based Paint Hazards</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(6)</p>
<p>Shaffer Village Apartments South Lane 16</p>	<p>September 18, 2018</p>	<p>Failure to include in lease a Lead Warning Statement with the language specified in 40 C.F.R. §745.113(b)(1)</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(1)</p>

28. Each of Respondent’s failures to comply with the requirements of the Lead Disclosure Rule as identified in the chart in the preceding paragraph constitutes an independent violation of TSCA and the Act for which penalties may be individually assessed.

29. On February 21, 2023, EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter setting out the alleged violations of the Lead Disclosure Rule requirements and extending an offer to meet. Following the issuance of the February 21, 2023, letter, the Parties met and/or communicated several times. At these meetings, EPA provided compliance assistance and Respondent demonstrated a commitment to compliance with the Disclosure and RRP Rules, including immediate institution of significant compliance measures and the development of the additional measures described below and incorporated into this CA/FO.

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 voluntarily and knowingly accepted by Respondent, that Respondent

shall comply with the following terms:

30. For the purpose 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 alleged herein; and (b) neither admits nor denies the specific factual allegations contained in the “EPA Findings of Fact and Conclusions of Law” section above.

31. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 *et seq.*, and the Act, 42 U.S.C. § 4852d, and the federal regulations at 40 C.F.R. Part 745.

Certifications

32. Respondent certifies that it is currently in compliance with the statutory provisions of subchapter IV of TSCA, 15 U.S.C. §§ 2681- 2692, Section 1018 of the Act, 42 U.S.C. § 4852d, and the federal regulations codified at 40 C.F.R. Part 745.

33. Respondent certifies that EPA has provided Respondent with information and compliance assistance regarding the requirements of the Disclosure Rule and the RRP Rule, and of its compliance obligations thereunder.

34. Respondent certifies that it is aware of the lead-based paint regulations promulgated by the United States Department of Housing and Urban Development (“HUD”) as the Lead Disclosure Rule, 24 C.F.R. Part 35 Subpart A, and the Lead Safe Housing Rule, 24 C.F.R. Part 35, Subparts B, H, L and R, and of its compliance obligations thereunder.

Compliance Obligations

35. To facilitate its future compliance with EPA’s lead-based paint regulations, Respondent developed and adopted a “Lead Disclosure Rule Compliance Plan” and “RRP Rule Compliance Plan¹,” each dated August 15, 2023. Respondent also developed and adopted a Standard Operating Procedure

¹ BMHA is a Firm subject to the RRP Rule. BMHA obtained from EPA initial RRP Firm certification on August 10, 2023 (expiring August 24, 2028). See Appendix I of the RRP Rule Compliance Plan.

guidance, dated August 15, 2023, setting out directions for BMHA staff in the event an Abatement of lead-based paint or lead-based paint hazards in Target Housing managed by Respondent is to be performed (“Abatement SOP”). The Lead Disclosure Rule Compliance Plan with appendices, RRP Rule Compliance Plan with appendices, and Abatement SOP with appendices are annexed hereto as Attachments 1, 2, and 3, respectively, and each is fully incorporated by reference into this CA/FO.

36. Respondent shall implement the Lead Disclosure Rule and RRP Rule Compliance Plans and the Abatement SOP at all Target Housing, as that term is defined by 40 C.F.R. § 745.83, it manages. Respondent shall also implement the RRP Rule Compliance Plan and, if applicable, the Abatement SOP, in any child-occupied facilities it acquires or creates within the compliance period of this CA/FO. Implementation of the Lead Disclosure Rule and RRP Rule Compliance Plans and Abatement SOP is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to compliance therewith. Adherence to the provisions of the Lead Disclosure Rule and RRP Rule Compliance Plans and Abatement SOP shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745, or any other federal, state, or local lead-based paint requirements, nor a defense to the failure to do so.

37. Respondent shall submit quarterly reports (*i.e.*, every ninety (90) days) (hereinafter “Quarterly Reports”) for a period of one year, with the first Quarterly Report due ninety (90) calendar days (“the Reporting Period”) following the date of the Regional Administrator’s signature of the Final Order. The Reports shall be submitted to EPA and document the Respondent’s implementation during the Reporting Period of the Lead Disclosure Rule and RRP Rule Compliance Plans (and, if an Abatement of lead-based paint or a lead-based paint hazards is started in the relevant period, of the Abatement SOP).

38. Each Quarterly Report shall be submitted by Respondent and received by EPA no later than fifteen (15) calendar days following the end of each Reporting Period.

39. With regard to the Lead Disclosure Rule Compliance Plan, each Quarterly Report shall

state the total number of leases and lease renewals for Target Housing entered into in the previous ninety (90) days. The Report shall also include the following additional compliance information and documents:

- a. The complete address of the units leased (building address and individual apartment unit numbers, if any).
- b. If the units leased are located anywhere other than Frederick Douglass and Shaffer Village Apartments indicate the type of residence (house, apartment, multi- residence building) and the original construction year of the building.
- c. The effective date of the lease and the date the lessor disclosure form was signed.
- d. The name of each lessee and, if other than an employee of BMHA, the name and title of the agent signing for lessor.
- e. Ten complete lease or lease renewals entered into during the preceding ninety (90) days at both Frederick Douglass and Shaffer Village Apartments (twenty (20) total; ten (10) for each development). A complete lease or lease renewal shall include for each unit leased: the lease or lease renewal document, the Disclosure Rule Leasing Compliance Checklist (Appendix 1), and the Completed Lessor Disclosure Form (Attachment 3).

40. With regard to the RRP Rule Compliance Plan, each Quarterly Report shall provide a narrative summary of all Renovations² commenced (even if still underway at the time of the report) during the previous ninety (90) days, and shall include the following additional compliance information and documents:

- a. The complete address of any Renovation conducted or underway at the time of the report and the areas renovated or to be renovated (*e.g.*, building address, apartment unit number(s), common area, exterior) and indicate whether or not the Renovate Right Pamphlet was provided and if so, to whom. (See Appendix IV of the RRP Rule Compliance Plan).
 - i. If conducted at Target Housing or a Child Occupied Facility located anywhere other than Frederick Douglass and Shaffer Village Apartments, also include:
 - 1) The type of residence (*e.g.*, multi-family apartment building) or child-occupied facility (*e.g.*, day care center).
 - 2) If a multi-family building, indicate the number of floors and number of apartments on each floor.

² As defined in Paragraph 12, above, and 40 C.F.R. § 745.83

- 3) The original construction year of the building(s).
 - ii. The details of the Renovation work performed/still to be performed.
 - iii. Whether or not the Renovation site was/will be occupied or in use at the time of the renovation, and steps taken or to be taken to protect occupants.
 - iv. If a Firm other than BMHA conducted or is to conduct the work, the name, address, and telephone number of the Firm who was/will be performing the work. Include a copy of the Firm's EPA-issued certification.
 - v. The name, address and telephone number of the individual who was/will be the on-site certified Renovator for the work and include a copy of the Renovator's training certificate. (See Appendix II of the RRP Rule Compliance Plan for Certified Renovator Individual Certification).
 - vi. The scheduled dates of the Renovation, including start date and projected finish date.
 - b. A completed Pre-Renovation Occupant Acknowledgement Form, if applicable (Appendix V of the RRP Rule Compliance Plan).
 - c. A completed Notice of Common Area Renovation form, if applicable (Appendix VI of the RRP Rule Compliance Plan).
 - d. A completed RRP Renovation Recordkeeping Checklist (Appendix VII of the RRP Rule Compliance Plan) for all renovations conducted in the quarter.
 - e. A completed Post-Renovation Cleaning Verification Form (Appendix VIII of the RRP Rule Compliance Plan) for all renovations completed in the quarter.
41. If an abatement is commenced in Target Housing managed by Respondent in a Reporting Period, then Respondent shall include the following information in the Quarterly Reports for that period and any periods in which the work continues:
- a. The Lead Abatement Compliance Checklist for any such abatement (Appendix II of the Abatement SOP).
 - b. Complete address of the building where the abatement took place or is taking place and the locations within the building where lead-based paint and/or lead-based paint hazards were detected and abated or to be abated.
 - c. At each location where abatement took place or is taking place, the components on which lead-based paint and/or lead-based paint hazards were detected and abated or to be abated.
 - d. State the reason for the abatement and provide relevant documentation (*e.g.*, order following an elevated blood lead level in a minor resident; result of any testing, inspection, or risk assessment conducted; specific HUD policy or directive).
 - e. The name and contact information of the EPA- certified lead abatement contractor

that was hired to perform the abatement work, along with a copy of the contractor's lead abatement certification.

- f. The name and contact information of the certified abatement supervisor assigned to oversee each abatement, along with a copy of each abatement supervisor's EPA-issued certificate.
- g. A copy of the EPA Notification submitted for the abatement (see 40 C.F.R. § 745.227(e)(4)).
- h. A copy of the Occupant Protection Plan(s) prepared for the abatement (see 40 C.F.R. § 745.227(e)(5)).
- i. A copy of the final Abatement Report prepared for the abatement (see 40 C.F.R. § 745.227(e)(10)).

42. If no activities subject to the Disclosure or RRP Rule Compliance Plans or the Abatement SOP are undertaken in a given quarter, Respondent shall so state in the Quarterly Report for that quarter. For any activity in Target Housing that Respondent determines is exempt from the RRP Rule based solely on the results of lead-based paint testing, Respondent must provide test results that meet the requirements of 40 C.F.R. § 745.82 in the relevant quarterly report.

43. The Quarterly Reports shall be sent to the following addressee, by email:

Demian Ellis
Ellis.Demian@epa.gov

and

Bruce H. Aber
Aber.Bruce@epa.gov

44. Each Quarterly Report shall contain the following certification signed by an authorized official of Respondent:

"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 and to the best of my knowledge and belief, 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 for knowing violations."

45. Within fifteen (15) business days following receipt of each Quarterly Report, EPA will

notify Respondent of any deficiencies EPA identifies in the Report. If EPA identifies deficiencies in the information reported, the notice shall so state, and Respondent shall have ten (10) business days following receipt of notice to provide the missing information. If EPA identifies deficiencies that appear to indicate an underlying failure of substantive compliance with the relevant Rule, the notice shall so state and require Respondent to provide a narrative response and/or action to correct the underlying compliance deficiencies. Respondent shall have fifteen (15) business days following receipt of notice in which to provide a narrative response explaining the apparent compliance failure and, if necessary, indicating how Respondent has corrected the identified compliance failure or plans to (including a detailed schedule for achieving compliance). The time to respond and/or correct any deficiencies shall not extend or delay the due date for submitting the next scheduled Quarterly Report unless otherwise agreed to in writing by both Parties.

46. If in the future EPA believes that any of the certified information provided in the Quarterly Reports is inaccurate, EPA will advise Respondent, in writing, of its belief and its basis for such and will afford Respondent thirty (30) calendar days following receipt of notice to respond to EPA. If EPA still believes the certification(s) is (are) mostly inaccurate, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.* or any other applicable law.

47. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the Quarterly Report(s) as required herein, Respondent shall notify EPA in writing within fourteen (14) days following 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 cause of the delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the submission of the Quarterly 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 Quarterly Report or, if applicable, the Abatement SOP 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 of no longer than the Delay resulting from such circumstances.

c. In the event that EPA does not agree that a delay in submitting the Quarterly Reports has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its belief and its basis for such and will afford Respondent fifteen (15) business days following receipt of notice to respond to EPA. If EPA still believes that the delay has not been or will not be caused by circumstances beyond the control of the Respondent, then any such 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.

Penalty

48. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, EPA considered the nature, circumstances, extent, and gravity of the alleged violations; Respondent's ability to pay; the effect of the penalty on Respondent's ability to continue its operations; Respondent's history of prior violations; Respondent's degree of culpability; any economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors, EPA determined, and Respondent agrees, that a civil penalty in the amount of **Two Hundred and Fifty-Two Thousand Dollars (\$252,000.00)** shall be assessed against Respondent for the TSCA violations alleged herein.

49. Pursuant to 40 C.F.R. § 22.31(c), Respondent and EPA agree that payment of the civil penalty by Respondent is deferred until EPA issues a remittance or non-remittance notice.

50. EPA agrees to remit the entire penalty and issue a remittance notice upon Respondent's completion, to EPA's satisfaction, of the compliance work obligations specified in Paragraphs 35 to 44, above.

51. Unless the Parties agree in writing to a different date, EPA shall issue a remittance or non-remittance notice no later than one hundred and twenty (120) calendar days following the date of EPA's receipt of the final Quarterly Report.

52. If EPA in its sole discretion determines that the Respondent has failed to implement its compliance obligations under this CA/FO fully, timely, and satisfactorily, EPA may issue a non-remittance notice requiring Respondent to pay the full civil penalty amount in Paragraph 48, above, plus interest (at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)) accrued from the date of the issuance of the Final Order for this settlement. Any non-remittance notice will set forth the details of the penalty payment procedures and calculations. In no event shall Respondent pay any portion of the non-remitted civil penalty or interest thereon from federal funds restricted from use for such purpose by statute or regulation as determined by HUD.

53. Prior to making a determination that Respondent has failed to perform the compliance obligations contained herein and issuing a non-remittance notice, EPA will give Respondent written notice(s) of deficiencies and provide Respondent with thirty (30) calendar days to cure such deficiencies.

54. The parties shall use their best efforts informally and in good faith to resolve disputes and differences of opinion that may arise concerning provisions of this Order. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by EPA pursuant to this Order with respect to the following: (1) adequacy, completeness, or timeliness of a Quarterly Report; or (2) an EPA determination to issue a non-remittance notice, pursuant to Paragraph 52 of this CA/FO,

Respondent shall notify EPA in writing of such objections and the basis (bases) therefore within thirty (30) calendar days following receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis for Respondent's position, and any matters Respondent considers necessary for EPA's determination. Following EPA's receipt of such written notice, EPA will provide Respondent with a decision in writing on the pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

55. Respondent voluntarily 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 and any further instructions transmitted by EPA in accordance with Paragraph 52. Full payment or remittance of the assessed penalty shall only resolve Respondent's liability for federal civil penalties for the alleged violations described in Paragraphs 27 and 28 above. Full payment or remittance 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 or violations of law.

56. The civil penalty provided for herein is a "penalty" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state, or local law.

General Provisions of Settlement

57. Any responses, documentation, and communication submitted in connection with this Consent Agreement shall be sent to the EPA addressee(s) identified in Paragraph 43 above, by email. Unless the above-named EPA contacts are later advised otherwise in writing by email, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Gillian D. Brown, Esq. Executive Director
Buffalo Municipal Housing Authority
gbrown@bmhahousing.com

and

Modesto Candelario
Assistant Executive Director
Buffalo Municipal Housing Authority
mcandelario@bimahousing.com

58. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk via electronic mail. Delivery of the fully executed documents to the email address in Paragraph 57 above, shall constitute Respondent's receipt and acceptance of the CA/FO.

59. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and knowingly and voluntarily consents to its issuance and its terms. Respondent agrees that this CA/FO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.

60. Nothing in this document is intended nor shall be construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any other applicable provision of law.

61. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the CA/FO and any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

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

63. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the Act, the regulations promulgated thereunder, or any other provisions of federal, state, or local law. Nothing in this CA/FO shall be construed as a ruling on, or determination of, any issue related to any federal, state, or local permit.

64. The terms of this CA/FO bind the Respondent, its successors, and assigns. 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.

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

Buffalo Municipal Housing Authority

RESPONDENT:

BY:



(SIGNATURE)

NAME: Gillian D. Brown

(PLEASE PRINT)

TITLE: Executive Director

DATE: September 21, 2023

COMPLAINANT:

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

DATE: _____

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 Buffalo Municipal Housing Authority, Docket Number TSCA-02-2023-9275. 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.

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency –
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Date: _____

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:

By email to:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Maples.Karen@epa.gov

Gillian D. Brown, Esq.
Executive Director
Buffalo Municipal Housing Authority
300 Perry Street
Buffalo, NY 14204
gbrown@bmhahousing.com

Modesto Candelario
Assistant Executive Director
Buffalo Municipal Housing Authority
300 Perry Street
Buffalo, NY 14204
mcandelario@bmhahousing.com

Dated: _____
New York, NY