



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 19 2019

REPLY TO THE ATTENTION OF

ECP-17J

VIA E-MAIL

Mr. Rick Bedel  
Owner  
Rick Bedel Construction  
614 Marview Ter  
Cincinnati, Ohio 45231

Consent Agreement and Final Order – In the Matter of:  
Rick Bedel Construction, Docket No. TSCA-05-2019-0012

Dear Mr. Bedel:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 19, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,720 is to be paid in the manner described in paragraphs 61 and 62. Please be certain that the docket number is written on the transmittal letter.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Christina Saldivar".

Christina Saldivar  
Pesticides and Toxics Compliance Section

Enclosure

cc: Jon Micah Goeller, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Rick Bedel Construction  
Cincinnati, Ohio

Respondent.



) Docket No. TSCA-05-2019-0012

) Proceeding to Assess a Civil Penalty Under  
) Section 16(a) of the Toxic Substances  
) Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement Compliance and Assurance Division, U. S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Rick Bedel Construction, a sole proprietorship with a place of business located at 614 Marview Ter, Cincinnati, Ohio 45231.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the

civil penalty specified below.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

**Statutory and Regulatory Background**

10. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the

most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

11. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing (housing built before 1978), any public building constructed before 1978, commercial building, or other structure, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, and commercial buildings that create lead-based paint hazards.

14. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681-92.

15. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 754.87.

16. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

17. Under Sections 402 and 407 of TSCA, 15 U.S.C. §§ 2682 and 2687, EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, Residential Property Renovation and Lead-Based Paint Activities, and prescribe procedures and requirements for the accreditation of training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities.

18. 40 C.F.R. § 745.83 defines *firm* to mean 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.

19. 40 C.F.R. § 745.83 defines *minor repair and maintenance activities* to mean activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six 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 no 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.

20. 40 C.F.R. § 745.83 defines *renovation* to mean 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, 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.

21. 40 C.F.R. § 745.83 defines *renovator* to mean 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.

22. 40 C.F.R. § 745.103 defines *residential dwelling* to mean a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

23. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

24. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities, in accordance with 40 C.F.R. § 745.82.

25. 40 C.F.R. § 745.82(b) defines *emergency renovations* as renovation activities that were not planned but from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

26. 40 C.F.R. § 745.82(b) exempts emergency renovations from the information distribution requirements, warning sign, containment, waste handling, training and certification requirements, found at 40 C.F.R. §§ 745.84, 745.85, 745.89 and 745.90, to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of 40 C.F.R. § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2), the cleaning verification requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6).

27. 40 C.F.R. § 745.85(a) requires that renovations, as defined in 40 C.F.R. § 745.83, must be performed by certified firms, in accordance with 40 C.F.R. § 745.89(d), using certified renovators in accordance with 40 C.F.R. § 745.90(b).

28. 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) requires firms that perform, offer, or claim to perform renovations, as defined in 40 C.F.R. § 745.83, for compensation to apply for and obtain certification from EPA to perform renovations at target housing or child-occupied facilities, with exceptions not relevant here.

29. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

30. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85, that a certified renovator was assigned to the renovation project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in §745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in §745.85(b).

31. 40 C.F.R. § 745.86(b)(6) requires that during an emergency renovation as defined in 40 C.F.R. § 745.82, the firm must document that nature of the emergency and the provisions of the rule that were not followed.

32. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$37,500 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after January 9, 2009 through November 2, 2015, and up to \$39,873 per violation for each day of violation that occurred after November 2, 2015.

### **Penalty Provisions**

33. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

34. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$37,500 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after January 9, 2009 through November 2, 2015, and up to \$39,873 per violation for each day of violation that occurred after November 2, 2015.

### General Allegations

35. Complainant incorporates paragraphs 1 through 34 of this CAFO as if set forth in this paragraph.

36. At all times relevant to this CAFO, Respondent is a sole proprietorship with a place of business located at 614 Marview Ter, Cincinnati, Ohio 45231. Respondent was, therefore, a *firm*, as defined in 40 C.F.R. § 745.83.

37. On July 19, 2017, a representative of EPA conducted an inspection of Respondent to monitor Respondent's compliance with Section 402 of TSCA, 15 U.S.C. § 2682.

38. On June 11, 2018, Complainant issued a request for information to Respondent, seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgement of receipt of a pamphlet by the owners and occupants of residential housing since April 22, 2010.

39. On July 10, 2018, Respondent provided EPA with documents in response to the request of information referenced in paragraph 38.

40. Based on the information provided by Respondent in response to Complainant’s request for information, respondent entered into the following written work agreement (contract) with an individual for contracted work in the following residential housing unit:

Property Address	Built Year	Contracted Work	Date of Contract	Date(s) Work Performed
2359 West Clifton Avenue, Cincinnati, OH	1895	Replace siding due to water intrusion. (Emergency Renovation)	July 10, 2017	July 11, 2017 to July 19, 2017

41. The housing addressed above is a residential dwelling built prior to 1978, and is , therefore, *target housing* as defined in 40 C.F.R. § 745.103.

42. Respondent’s modification of the buildings’ existing structure described in the preceding paragraph was a *renovation* as defined in 40 C.F.R. § 745.83.

43. The renovation described in paragraph 40 was an *emergency renovation* as defined in 40 C.F.R. § 745.82(b).

44. Respondent either performed or directed workers to perform for compensation, the renovations described in paragraph 40.

**Count 1**

45. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

46. 40 C.F.R. § 745.89(d)(1) requires that firms must ensure that all individuals performing the renovation on behalf of the firm were either certified renovators or have been trained by a certified renovator.

47. Pursuant to 40 C.F.R. § 745.82(b), emergency renovations are not exempt from the cleaning requirements of 40 C.F.R. § 745.85(a), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2); and, the cleaning verification requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6).

48. After responding to the emergency renovation, Respondent failed to ensure that all individuals performed the renovation work on behalf of the firm described in paragraph 40 were either certified renovators or have been trained by a certification renovator.

49. Respondent's failure to ensure that all individuals performed the renovation work on behalf of the firm described in paragraph 40 were either certified renovators, or have been trained by a certified renovator, constitutes a violation of 40 C.F.R. § 745.89(d)(1) and Section 409 of TSCA, 15 U.S.C § 2689.

### **Count 2**

50. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

51. 40 C.F.R. § 745.89(d)(2) requires that firms must assign a certified renovator to each renovation performed by the firm and that the certified renovator discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

52. Pursuant to 40 C.F.R. § 745.82(b), emergency renovations are not exempt from the cleaning requirements of 40 C.F.R. § 745.85(a), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2); and, the cleaning verification

requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6).

53. After responding to the emergency renovation, Respondent failed to ensure that a certified renovator was assigned to the renovation work performed by the firm as described in paragraph 40, and did not discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

54. Respondent's failure to ensure that a certified renovator conducted the renovation work performed by the firm as described in paragraph 40 constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C § 2689.

### **Count 3**

55. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

56. Pursuant to 40 C.F.R. § 745.82(b), emergency renovations are not exempt from the cleaning requirements of 40 C.F.R. § 745.85(a), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2); and, the cleaning verification requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6).

57. 40 C.F.R. § 745.86(b)(6), in an emergency renovation as defined in 40 C.F.R. § 745.82, the firm is required to document that nature of the emergency and the provisions of the rule that were not followed.

58. Respondent failed to maintain records that document the following requirements: the nature of the emergency renovation and the provisions of the RRP Rule that the Respondent

was unable to comply with due to the emergency; and, that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

59. Respondent's failure to maintain records that document the following requirements constitutes as a violation of 40 C.F.R. § 745.86, and Section 409 of TSCA, 15 U.S.C § 2689.

#### Civil Penalty

60. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$6,720. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

61. Within 30 days after the effective date of this CAFO, Respondent must pay the \$6,720 civil penalty for the TSCA violations by an on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

62. Respondent must send a notice of payment that states Respondent's name and the case docket to EPA at the following addresses when its pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Christina Saldivar (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Jon Micah Goeller (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

63. This civil penalty is not deductible for federal tax purposes.

64. If Respondent does not timely pay the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

65. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### General Provisions

66. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: goeller.jon@epa.gov (for Complainant), and rickbedel@yahoo.com (for Respondent).

The parties waive their right to service by the other methods specified in 40 C.F.R § 22.6.

67. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

68. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

69. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

70. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

71. The terms of this CAFO bind Respondent and its successors and assigns.

72. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

73. Each party agrees to bear its own costs and attorney's fees in this action.

74. This CAFO constitutes the entire agreement between the parties.

75. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order  
In the Matter of: Rick Bedel Construction  
Docket No. TSCA-05-2019-0012**

**Rick Bedel Construction, Respondent**

6/24/2019  
Date

Rick Bedel  
Rick Bedel  
Owner  
Rick Bedel Construction

**United States Environmental Protection Agency, Complainant**

8/15/2019  
Date

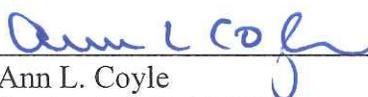
Michael D. Harris  
Michael D. Harris  
Acting Division Director  
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order**  
**In the Matter of: Rick Bedel Construction**  
**Docket No. TSCA-05-2019-0012**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

8/14/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Rick Bedel Construction**  
**Docket Number: TSCA-05-2019-0012**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed August 19, 2019, this day in the following manner to the addressees:

Copy by e-mail to  
Respondent:

Mr. Rick Bedel  
Rick Bedel Construction  
rickbedel@yahoo.com

Copy by e-mail to  
Attorney of Complainant:

Jon Micah Goeller  
goeller.jon@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: August 29, 2019

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5