



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**JUN 21 2018**

REPLY TO THE ATTENTION OF:  
LC-17J

VIA EMAIL

Mr. George Alexander Balz  
Owner  
Posh Nest 505, LLC  
532 East Thirteenth Street  
Cincinnati, Ohio 45202

alexanderbalz@gmail.com

Consent Agreement and Final Order – In the Matter of:  
Posh Nest 505, LLC  
Docket No. **TSCA-05-2018-0009**

Dear Mr. Balz:

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 June 21, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,200 is to be paid in the manner described in paragraphs 38 and 39. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Bessler", with a long horizontal line extending to the right.

Scott Bessler  
Pesticides and Toxics Compliance Section

Enclosure

cc: Kasey Barton, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Posh Nest 505, LLC  
Cincinnati, Ohio

Respondent.



Docket No. TSCA-05-2018-0009

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 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 the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Posh Nest 505, LLC, a limited liability company with a place of business located at 532 East Thirteenth Street, Cincinnati, Ohio 45202.
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) and 22.18(b)(2)-(3).
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 assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, 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.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550, amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

12. Pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

13. 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.

14. 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

15. 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.

16. 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.

17. 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) requires firms that perform renovations for compensation to apply and obtain certification from EPA to perform renovations or dust sampling in target housing or child occupied facilities, with exceptions not relevant here.

18. 40 C.F.R. § 745.89(d)(1) requires firms performing renovations to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

19. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, and may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

20. 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 Section 409 of TSCA that occurred after December 6, 2013 through November 2, 2015, and up to \$38,892 per violation for each day of violation of Section

409 of TSCA that occurred after November 2, 2015. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689.

### **General Allegations**

21. At all times relevant to this CAFO, Respondent was a limited liability company with a place of business in the State of Ohio, and, therefore, was a “firm” as defined by 40 C.F.R. § 745.83.

22. On September 16, 2014, EPA received a complaint concerning renovation activities conducted by Respondent at a property located at 505 East 13th Street, Cincinnati, Ohio.

23. On October 22, 2014, EPA issued a request for information to Respondent, seeking, among other things, a copy of Respondent’s firm certification and documentation ensuring that individuals performing renovations on behalf of the firm are either certified renovators or trained by a certified renovator as required by 40 C.F.R. Part 745, Subpart E.

24. On November 3, 2014, EPA received Respondent’s response to the October 22, 2014 request for information (“Response”).

25. Respondent’s Response contained a description of the activities that Respondent performed on September 16, 2014 at the residence at 505 East 13<sup>th</sup> Street, Cincinnati, Ohio, which included the power washing of the exterior surface of the building.

26. According to the Response, Respondent’s power washing activities generated loose paint chippings and particles that fell on the ground.

27. Based on information provided by the complaint received on September 16, 2014 and the Response, Respondent performed or directed workers who performed modifications of existing structures that resulted in disturbances of painted surfaces as detailed below.

### Target Housing

Housing Address	Year Built	Work Performed	Date(s) Work Performed
505 East 13th Street, Cincinnati, Ohio	1877	Power washing of the exterior of painted surface of the building.	September 16, 2014

28. The building at 505 East 13th Street, Cincinnati, Ohio is a house built prior to 1978 and, therefore, is “target housing” as defined at 40 C.F.R. § 745.103.

29. The activities that Respondent conducted at 505 East 13th Street, described in paragraphs 25 through 27, above, were a modification of the building’s existing structure that resulted in the disturbance of painted surfaces and, therefore, is a “renovation” as defined in 40 C.F.R. § 745.83.

30. Respondent either performed or directed workers to perform the renovation described in paragraphs 25 through 27, above, and, therefore, is a “renovator” as defined in 40 C.F.R. § 745.83.

31. Respondent did not provide EPA with a copy of its firm certification in the Response, and is not listed as a certified firm at EPA’s certified renovation and lead sampling technician firm database at <https://cfpub.epa.gov/flpp/pub/index.cfm?do=main.firmSearch>.

32. Respondent did not provide any documentation in the Response to show that the individuals performing the renovation described in paragraphs 25 through 27 were either certified renovators or had been trained by certified renovators.

### Count 1

33. Complainant incorporates paragraphs 21 through 32 of this CAFO as if set forth in this paragraph.

34. Respondent's failure to apply for and obtain certification from EPA to perform renovations before performing the renovation described in paragraphs 25 through 27, above, constitutes a violation of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

**Count 2**

35. Complainant incorporates paragraphs 21 through 32 of this CAFO as if set forth in this paragraph.

36. Respondent's failure to ensure that the renovation described in paragraphs 25 through 27, above, was performed by individuals who are either certified renovators or have been trained by certified renovators in accordance with 40 C.F.R. § 745.90, constitutes a violation of 40 C.F.R. § 745.89(d)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

**Civil Penalty**

37. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$1,200. 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, and the *Pilot Renovation, Repair and Painting ("RRP") Rule Penalty Program for Micro-Businesses*, dated May 3, 2012.



38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,200 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must state the case title ("In the Matter of: Posh Nest 505 LLC") and the docket number of this CAFO.

39. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

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

41. If Respondent does not timely pay the civil penalty, 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following 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

43. The parties consent to service of this CAFO by email at the following email addresses: barton.kasey@epa.gov (for Complainant) and alexanderbalz@gmail.com (for Respondent).

44. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

45. 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.

46. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

47. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

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

49. Each person signing this agreement 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.

50. This CAFO constitutes a “prior such violation” as that term is used in 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 to determine Respondent’s “history of prior such violations” under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

51. Each party agrees to bear its own costs and attorney fees in this action.

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

**Posh Nest 505, LLC, Respondent**

5/17/2018  
Date

G. Alexander Balz  
George Alexander Balz,  
Owner  
Posh Nest 505, LLC

**United States Environmental Protection Agency, Complainant**

6-20-18  
Date

Michael D. Harris  
Michael D. Harris  
Acting Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Posh Nest 505, LLC**  
**Docket No. TSCA-05-2018-0009**

**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.

June 20, 2018  
Date

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

Consent Agreement and Final Order  
In the matter of: Posh Nest 505, LLC  
Docket Number: TSCA-05-2018-0009

CERTIFICATE OF SERVICE

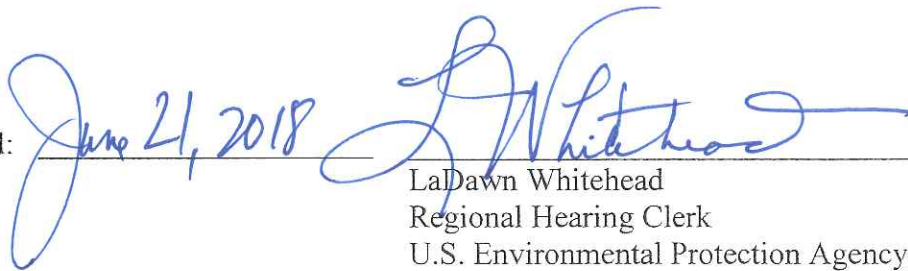
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 21, 2018, in the following manner to the following addressees:

Copy by E-mail to Respondent: Posh Nest 505, LLC  
Mr. George Alexander Balz  
Posh Nest 505, LLC  
532 East Thirteenth Street  
Cincinnati, Ohio 45202  
  
alexanderbalz@gmail.com

Copy by E-mail to  
Attorney for Complainant: Kasey Barton  
Barton.Kasey@epa.gov

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: June 21, 2018

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