

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

In the Matter of: )  
)  
LANDMARX CONSTRUCTION, LLC )  
6 City Center, Suite 400 )  
Portland, Maine 04101, )  
)  
Respondent. )  
)  
*Proceeding under Section 16(a) of the* )  
*Toxic Substances Control Act,* )  
*42 U.S.C. § 2615(a).* )  
)

EPA Docket No.  
TSCA-01-2020-0030

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the U.S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), alleges that Respondent, Landmarx Construction, LLC, violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L, as amended (collectively referred to herein as 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 40 C.F.R. §§ 22.13(b) and 22.18(b). 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 low-level lead poisoning is 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 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 taken into account 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 TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a). The regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities 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 [*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92], 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.”

4. 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.

5. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act, 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). *See* 40 C.F.R. § 745.103.

6. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

7. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either 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.

8. For purposes of complying with Section 406(b) of TSCA 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 Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (“Renovate Right”) (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

9. 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.

10. 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. The term renovation includes, but is not limited to: the removal or modification 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.

11. 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 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.

12. 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.

13. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this CAFO, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iv. Perform renovations in compliance with applicable work practice standards for any renovation, repair, and painting activities conducted; and,
- v. 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).

14. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA, such as the RRP Rule. Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA.

15. 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.

16. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Adjustment Rule set forth at 40 C.F.R. Part 19 ("Penalty Inflation Rule") and the Federal Civil Penalties Inflation Adjustment Improvement Act, each such TSCA violation that occurred after November 2, 2015, for which a penalty is assessed on or after January 13, 2020, is subject to a penalty of up to \$40,576 per day per violation. *See* 85 Fed. Reg. 1753 (Jan. 13, 2020).

## **II. GENERAL ALLEGATIONS**

17. Respondent, LandMarx Construction, LLC ("LandMarx"), is a Maine limited liability company incorporated in or around 2012, with its principal offices located at 6 City Center, Suite 400, Portland, Maine and 273 Presumpscot Street, Portland, Maine.

18. Respondent provides residential repair, renovation, and building services in and around Portland, Maine. Respondent has three employees, and operates under the direction of Jeff Marxhausen, LandMarx's principal.

19. On or about July 18, 2018, a duly-authorized EPA inspector conducted a compliance inspection ("inspection") of the renovation work. Respondent performed at a six-unit residential property located at 1-3 Cumberland Avenue, Portland, Maine ("1-3 Cumberland Ave."). The renovation entailed exterior wood removal and replacement; partial removal and replacement of the exterior siding boards; and re-siding with new siding of the entire exterior.

20. During the Inspection, EPA sought records and other information relative to Respondent's compliance with RRP Rule requirements.

21. At all times relevant to the allegations in this CAFO, Respondent performed renovation activities, which constituted a "renovation" within the meaning of 40 C.F.R. § 745.83 at 1-3 Cumberland Ave.

22. At all times relevant to the violations alleged in this CAFO, Respondent was a "firm," as defined in 40 C.F.R. § 745.83.

23. The residential property located at 1-3 Cumberland Avenue is located in an area of environmental justice concern. According to EPA's EJSCREEN,<sup>1</sup> in the one-mile circumference around 1-3 Cumberland Avenue about 49 percent of residents in homes have a "low income."<sup>2</sup> EPA, *EJSCREEN* (June 19, 2019), <https://ejscreen.epa.gov/mapper/>.

24. 1-3 Cumberland Avenue was built before 1978, and therefore, is target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the property does not satisfy the requirements for an exemption under the provisions of TSCA (including 15 U.S.C. § 2681(17)) or the RRP Rule (including 40 C.F.R. § 745.82).

### **III. VIOLATIONS**

25. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the Inspection and EPA's investigation of the facts and circumstances underlying the violations.

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<sup>1</sup> EJSCREEN is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN users choose a geographic area; the tool then provides demographic and environmental information for that area.

<sup>2</sup> "Low income" percentages are the percent of a census block group's population with a household income that is less than or equal to twice the federal "poverty level."

26. Each of the four below-referenced violations alleged in this CAFO is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and each is a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT ONE**

*Failure to Obtain EPA Certification*

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

28. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a). Pursuant to 40 C.F.R. § 745.89(a), firms performing renovations at target housing must apply for EPA certification to perform renovations or dust sampling to demonstrate compliance with 40 C.F.R. Part 745, Subpart E.

29. Respondent failed to obtain EPA RRP Rule firm certification prior to initiating the renovation described in paragraph 19. Respondent's failure to obtain EPA firm certification prior to performing renovations at 1-3 Cumberland Ave. constituted a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

**COUNT TWO**

*Failure to Assign Certified Renovator*

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

31. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations in target housing must assign a certified renovator to each renovation performed by the firm to



demonstrate compliance with 40 C.F.R. Part 745, Subpart E.

32. Respondent failed to assign a certified renovator during the renovation described in paragraph 19. Respondent's failure to assign a certified renovator constituted a violation of 40 C.F.R. § 745.89(d)(2).

**COUNT THREE**

*Failure to Provide EPA-Approved Lead Hazard Pamphlet*

33. Paragraphs 1 through 32, above, are incorporated by reference as if fully set forth herein.

34. Pursuant to 40 C.F.R. § 745.84(a)(2), firms performing renovations in target housing must provide adult occupants of the target housing with an EPA-approved lead hazard information pamphlet.

35. Respondent failed to provide the adult occupants of the target housing described in paragraph 19, EPA-approved lead hazard information pamphlets. The failure to provide the EPA-approved lead hazard information pamphlets constituted a violation of 40 C.F.R. § 745.84(a)(2).

**COUNT FOUR**

*Failure to Cover Ground with Plastic*

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

37. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations are performed in accordance with 40 C.F.R. § 745.85(a)(2)(ii)(C). Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), firms performing exterior renovations to target housing 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.

38. On or about July 18, 2018, Respondent failed to ensure that the ground was covered with plastic sheeting or other disposable impermeable material while Respondent performed the exterior renovations at the target housing described in paragraph 19. Respondent's failure to cover the ground with plastic sheeting or other impermeable material constituted a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

#### **IV. TERMS OF SETTLEMENT**

39. This CAFO shall apply to and be binding upon Respondent, its officers, successors and assigns.

40. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents for purposes of settlement to the terms of this CAFO.

41. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO and waives its right to appeal the Final Order accompanying this Consent Agreement.

42. Respondent agrees to operate its business in compliance with Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L.

43. Respondent has applied for and obtained EPA firm certification to perform renovations or dust sampling in compliance with 40 C.F.R. § 745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii).

44. Respondent agrees to assign a certified renovator to each renovation performed by Respondent in compliance with 40 C.F.R. § 745.89(d)(2).

45. Respondent agrees to provide owner and adult occupant(s) of target housing, where it performs renovations, with an EPA-approved lead hazard information pamphlet, in compliance with 40 C.F.R. § 745.84(a)(2).

46. Respondent agrees to cover the ground at target housing where it performs exterior renovations with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, in compliance with 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

47. Pursuant to Section 16 of TSCA, based upon the nature of the alleged violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of five thousand and twenty-one dollars (\$5,021).

48. Respondent consents to the issuance of this CAFO and for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

49. Respondent shall pay the penalty of five thousand and twenty-one dollars (\$5,021) within 30 days of the effective date of this CAFO in the following manner: The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of LandMarx Construction, LLC; Consent Agreement and Final Order, EPA Region 1,*” Respondent’s name and address, and

the EPA Docket Number of this action (TSCA-01-2020-0030), and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

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

**If remitted by any overnight commercial carrier:**

U.S. Environmental Protection Agency  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORC 4-6  
Boston, MA 02109-3912

and

Aleksandra George Ruiz  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORC 4-6  
Boston, MA 02109-3912

50. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions 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 applicable provision of law.

51. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

52. 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.

53. This CAFO constitutes a settlement by and between EPA and Respondent of all claims for civil penalties pursuant to TSCA for the violations alleged herein. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal

liability of the Respondent. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

55. Each undersigned representative of the Parties to this CAFO certifies that he, she, or they are 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.

56. 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.

57. The Parties agree that Respondent and EPA may execute this CAFO by electronic signature. To ensure the validity of these signatures and legal enforceability of this CAFO, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. Respondent's signature will also comply with all applicable Maine e-signature policies and laws, including the EPA regulations at 40 C.F.R. Part 3, which defines a "valid electronic signature" to mean "an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed." 40 C.F.R. § 3.3. At a minimum, all electronically signed documents must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) the unique identity of the individual who signed the document and their intent to sign; and (3) the date and time it was signed. Once the CAFO is signed by a Party, the document must be locked to prevent any further alteration of the document. Respondent may deliver electronically signed documents by email to the EPA at [george.aleksandra@epa.gov](mailto:george.aleksandra@epa.gov). After EPA's receipt of the electronically signed CAFO, EPA may electronically sign the CAFO and file and serve copies of the executed CAFO in accordance with the EPA Region 1 Regional Judicial Officer's Standard Operating Procedures dated March 24, 2020. An electronically signed CAFO delivered by email or in hard copy shall be deemed an original document, which shall be stored and managed in accordance with Maine and Federal recordkeeping requirements. 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.

For Complainant:

**KAREN  
MCGUIRE**

Digitally signed by KAREN  
MCGUIRE  
Date: 2020.09.22 13:24:03  
-04'00'

Date: \_\_\_\_\_

Karen McGuire  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region 1 – New England

For Respondents:



Jeff Marxhausen, Principal  
LandMarx Construction, LLC

Date: 9/14/20



**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

**LEANN  
JENSEN**

Digitally signed by  
LEANN JENSEN  
Date: 2020.09.25  
16:54:50 -04'00'

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LeAnn Jensen  
Regional Judicial Officer  
U.S. Environmental Protection Agency-Region 1

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Date