



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR - 4 2019

REPLY TO THE ATTENTION OF

LC-17J

Mr. Steve Acorn
President
Student Painters MI, LLC
14005 Simone Drive
Shelby Township, Michigan 48315

Consent Agreement and Final Order In the Matter of:
Student Painters MI, LLC **TSCA-05-2019-0008**

Dear Mr. Acorn:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on April 4, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$21,000 is to be paid in the manner described in Paragraphs 35 and 36. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2019-0008
)
Student Painters-Michigan, LLC) Proceeding to Assess a Civil Penalty Under
Shelby Township, Michigan,) Section 16(a) of the Toxic Substances
Respondent.) 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. § 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Student Painters-Michigan, LLC, a corporation with a place of business at 14005 Simone Drive, Shelby Township, Michigan 48315.
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 and neither admits nor denies factual allegations in this CAFO.

8. 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

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under age six; at low levels, lead poisoning in children causes intelligence quotient 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. *See* 42 U.S.C. § 4851.

10. Section 1021 of Title X amended TSCA by adding Sections 401-12, entitled Lead Exposure Reduction, at 15 U.S.C. §§ 2681-92.

11. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair, and Painting Program Rule (RRP Rule).

12. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Part 745, Subpart E applicable to renovations of target housing performed for compensation.

13. 40 C.F.R. § 745.83 defines “firm” as 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 40 C.F.R. Part 745 (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface

restoration, window repair, and surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

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 “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.

17. 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.

18. 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 civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. The Administrator of EPA may assess a civil penalty of up to \$38,892 for each violation of Section 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

General Allegations

20. Complainant incorporates paragraphs 1 through 19 of this CAFO as if set forth in this paragraph.

21. At all times relevant to this CAFO, Respondent was a limited liability corporation with a place of business located at 14005 Simone Drive, Shelby Township, Michigan 48315.

22. At all times relevant to this CAFO, Respondent's corporation was a *firm*, as defined at 40 C.F.R. § 745.83.

23. On June 14, 2016, Respondent scraped lead paint and repainted window trims, doors of the home and doors of the garage, or directed subcontractors to scrape lead paint and repaint window trims, doors of the home and doors of the garage at a residential dwelling on South Genesee Drive, Lansing, Michigan.

24. The work Respondent performed or directed at the property listed in paragraph 23 above, was a modification of the building's existing structure that resulted in disturbance of painted surfaces. In particular, the Respondent and its subcontractors, disturbed and removed painted surfaces and components and generated paint dust and debris at the property listed in paragraph 23 above, by scraping, priming, and painting the window trims, doors to the home and doors to the garage.

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

26. Respondent either performed or directed workers to perform for compensation, the renovations described in paragraph 23 above.

27. On June 14, 2016, Respondent was a *renovator* as defined at 40 C.F.R. § 745.83.

28. The building listed at the address in paragraph 23 above, was residential housing built in 1919.

29. The building listed at the address in paragraph 23 was *target housing* as defined at 40 C.F.R. § 745.103.

Failure to Install Ground Containment Measures

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

31. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires a firm to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

32. For the renovation referenced in paragraph 23, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces or a sufficient distance to collect falling paint debris, and the property line did not prevent 10 feet of such ground covering.

33. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces or a sufficient distance

to collect falling paint debris, unless the property line prevents 10 feet of such ground covering, violates 40 C.F.R. § 745.85(a) and 15 U.S.C. § 2689.

34. On June 28, 2016, a Michigan Registered Lead Inspector and Risk Assessor conducted an exterior lead clearance examination at the residential dwelling on South Genesee Drive, Lansing, Michigan. The results indicated that no lead-based paint hazards remained and the exterior of the residential dwelling was deemed lead-safe at the time of the lead clearance examination.

Civil Penalty

35. 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 \$21,000. 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*, Revised April 5, 2013.

36. Within 30 days after the effective date of this CAFO, Respondent must pay the \$21,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: the case title (“In the Matter of Student Painters MI, LLC”) and the docket number of this CAFO.

37. A transmittal letter stating Respondent’s name, complete address, and the case docket number must accompany the payment in paragraph 35. Respondent must send a copy of the check and transmittal letter to:

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

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

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

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

39. 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). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

40. 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

41. The parties consent to service of this CAFO by email at the following valid email addresses: asque.gillian@epa.gov (for Complainant) and tasp3@aol.com (for Respondent). See 40 C.F.R. § 22.5-6. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

43. 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.

44. 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.

45. This CAFO constitutes a "previous violation" under 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*, Revised April 5, 2013.

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

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

48. 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.

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

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

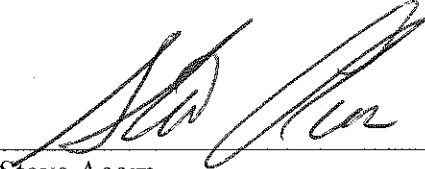
51. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

In the Matter of Student Painters-Michigan, LLC

Docket No. TSCA-05-2019-0008

**Student Painters-Michigan, LLC
Respondent**

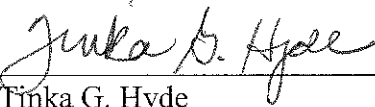
March 11, 2019
Date



Steve Acorn
President
Student Painters-Michigan, LLC

United States Environmental Protection Agency, Complainant

March 25, 2019
Date



Tinka G. Hyde
Division Director
Land and Chemicals Division

In the Matter of Student Painters-Michigan, LLC

Docket No. TSCA-05-2019-0008

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.

April 8, 2019
Date

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

In the matter of: Student Painters MI, LLC
Steve Acorn, President

Docket Number: **TSCA-05-2019-0008**

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 April 4, 2019, in the following manner to the addressees:

Copy by E-mail to
Respondent:

Steve Acorn, President
Student Painters MI, LLC
14005 Simone Drive
Shelby Township, Michigan 48315
tasp3@aol.com

Copy by E-mail to
Attorney for Complainant:

Gillian Asque
asque.gillian@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

April 4, 2019 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7014 2870 0001 9577 7227