



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

September 8, 2021

REPLY TO THE ATTENTION OF

VIA ELECTRONIC MAIL

Mr. Andrew K. Sykora
Owner
Window Universe Cleveland, LLC
17411 Detroit Avenue
Lakewood, Ohio 44107

asykora@windowuniversecleveland.com

Consent Agreement and Final Order – In the Matter of:
Window Universe Cleveland, LLC Docket No. TSCA-05-2021-0011

Dear Mr. Sykora:

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 September 8, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,000 is to be paid in the manner described in paragraphs 45 and 46. 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,

Michael Todd
Digitally signed by
Michael Todd
Date: 2021.09.01
09:05:14 -05'00'

Michael Todd
Pesticides and Toxics Compliance Section

Enclosure

cc: Christopher Grubb (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. TSCA-05-2021-0011
)	
Window Universe Cleveland, LLC)	Proceeding to Assess a Civil
Lakewood, Ohio)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
<hr/>)	

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 Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (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 and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Window Universe Cleveland, LLC, with a place of business located at 17411 Detroit Avenue, Lakewood, Ohio 44107.

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). 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, 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.

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, requires 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; 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, requires 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 and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

14. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), requires the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

15. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting

requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

16. Section 11 of TSCA, 15 U.S.C. § 2610, provides EPA with authority to conduct inspections upon the presentation of appropriate credentials and written notice.

17. 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. § 745.87.

18. 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.

19. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682, 2686, and 2687, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms engaged in lead-based paint activities; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. *73 Fed. Reg.* 21691 (April 22, 2008).

20. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

21. 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.

22. 40 C.F.R. § 745.83 defines *pamphlet* to mean the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revisions or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

23. 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; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

24. 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.

25. 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.

26. 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, with exceptions not relevant here. 40 C.F.R. § 745.82.

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

28. 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.

29. 40 C.F.R. § 745.86(b)(6) requires a firm to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the 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).

30. 40 C.F.R. § 745.84(a)(1) requires firms to provide the owner of the unit with the EPA-approved lead hazard information pamphlet no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing.

31. 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, authorize the Administrator of EPA to assess a civil penalty of up to \$41,056 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020.

General Allegations

32. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

33. At all times relevant to this Complaint, Respondent’s corporation was a *firm* as defined by 40 C.F.R. § 745.83.

34. On October 30, 2020, an authorized EPA representative arrived at Respondent’s place of business and presented her federal inspector credentials and a written notice of inspection to monitor Respondent’s compliance with Sections 406 and 407 of TSCA and the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

35. Based on the information provided to Complainant by Respondent, as well as building-year information publicly available on the property value assessment website (accessed on March 3, 2021) of Cuyahoga County (<https://www.fiscalofficer.cuyahogacounty.us/>) and Lorain County (<https://www.loraincountyauditor.com/>), Respondent performed, or directed workers to perform for compensation, the following modifications of existing structures that resulted in disturbances of painted surfaces in the following residential housing built prior to 1978, referenced in this Table:

Line No.	Residential Street Name	City	State	Zip Code	Residence Type	Built Year	Work Contract Date	Contracted Work
1	Archwood Ave.	Lorain	OH	44052	Single Family	1930	7/31/2018	13 Replacement Windows
2	Washington Ave.	Lorain	OH	44052	Single Family	1923	10/8/2018	7 Replacement Windows 3 Entry-Storm Door Installation
3	Concord Dr.	Lorain	OH	44052	Single Family	1948	12/12/2019	19 Replacement Windows
4	South Main	Milan	OH	44846	Single Family	1890	1/24/2020	14 Replacement Windows 3 Storm Door Replacements
5	Parkridge Ave.	Cleveland	OH	44144	Single Family	1941	2/13/2020	Window Replacement

6	West Blvd.	Cleveland	OH	44111	Single Family	1951	2/10/2020	3 Replacement Windows
7	Grace Ave.	Lakewood	OH	44107	Single Family	1911	2/19/2020	8 Replacement Windows
8	Elbur Ave.	Lakewood	OH	44107	Single Family	1922	5/20/2020	1 Window Replacement
9	Quail Hollow Dr.	Strongsville	OH	44136	Single Family	1974	5/26/2020	1 Window Replacement 3 door replacements
10	Dilworth	Elyria	OH	44035	Single Family	1960	6/2/2020	4 Window Replacements
11	Northland Ave.	Lakewood	OH	44107	Single Family	1917	6/15/2020	4 Replacement Windows
12	Clifton Blvd.	Lakewood	OH	44107	Single Family	1922	5/29/2020	2 window replacements 1 door replacement
13	Beverly Rd.	Cleveland	OH	44121	Single Family	1925	6/17/2020	6 replacement windows
14	Halstead Ave	Lakewood	OH	44107	Single Family	1922	6/13/2020	8 Window Replacements 4 door replacements
15	Cohasset Ave.	Lakewood	OH	44107	Single Family	1903	6/29/2020	15 replacement windows 2 entry/storm doors
16	W. 117th St.	Cleveland	OH	44107	Single Family	1900	8/12/2020	5 Replacement Windows

36. At the 16 renovations referenced in paragraph 35, Respondent performed or directed performance of modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore *renovations* as defined in 40 C.F.R. § 745.83.

37. The 16 renovations referenced in paragraph 35 were each performed at residential housing built prior to 1978, and therefore each residential housing was *target housing* as defined in 40 C.F.R. § 745.103.

Count 1 to 10 – Failure to Provide the Owner of the Unit with the Lead Hazard

Information Pamphlet No More Than 60 Days before beginning Renovation Activities

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

39. Respondent performed renovation activities at ten residential dwelling units of target housing, described in paragraph 35 in the Table at Line Nos. 1 to 3, 6 to 7, 11 to 12 and 14 to 16 and failed to provide the owner of the unit with the EPA-approved lead hazard information pamphlet no more than 60 days before beginning renovation activities.

40. Respondent's failure to provide the owner of the ten dwelling units described in paragraph 35 with the EPA-approved lead hazard informational pamphlet no more than 60 days before beginning renovation activities constitutes a violation of 40 C.F.R. § 745.84(a)(1) and 15 U.S.C. § 2689.

**Counts 11 to 26 – Failure to Retain All Records Necessary to Demonstrate Compliance
with 40 C.F.R. Part 745, Subpart E**

41. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

42. In sixteen contracted renovations described in paragraph 35 in the Table at Line Nos. 1 to 16, Respondent failed to retain the records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the contracted renovations as follows:

- a. Failure to retain documentation that the certified renovator provided on-the-job training for workers used on the project as required by 40 C.F.R. § 745.86(b)(6)(i), for contracted renovations referenced in Line Nos. 1 to 16;
- b. Failure to retain documentation that the work area was contained by closing and sealing all windows within 20 feet of the work area as required by 40 C.F.R. § 745.86(b)(6)(v)(C), for the contracted renovations referenced in Line Nos. 1 to 16;
- c. Failure to retain documentation that the work area was properly cleaned after renovation by misting protective sheeting, folding it dirty side inward, and taping it for removal as required by 40 C.F.R. § 745.86(b)(6)(vii)(A), for the contracted renovations referenced in Line Nos. 1 to 16;

- d. Failure to retain documentation describing post renovation cleaning verification results, as required by 40 C.F.R. § 745.86(b)(6)(viii), for the contracted renovations referenced in Line Nos. 1 to 16;
- e. Failure to retain and provide documentation of wet and dry cloths used, as required by 40 C.F.R. § 745.86(b)(6)(viii), for the contracted renovations referenced in Line Nos. 1 to 16; and
- f. Failure to retain and provide records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as required by 40 C.F.R. § 745.86(b)(1), for the contracted renovations referenced in Line No. 9.

43. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of sixteen contracted renovations referenced in paragraph 35 in the Table at Line Nos. 1 to 16, constitutes sixteen violations of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689

Civil Penalty

44. 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 \$28,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, 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.

45. Within 30 days after the effective date of this CAFO, Respondent must pay the civil \$28,000 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 Respondent's name and the docket number of this CAFO.

46. Respondent must send a notice of payment that states Respondent's name 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

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

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

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

48. 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.

49. 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

50. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant), and asykora@windowuniversecleveland.com (for Respondent).

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

52. 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.

53. 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.

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

55. 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).

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

57. 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.

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

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

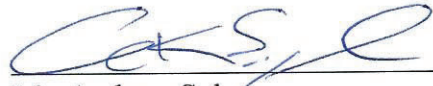
60. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

Consent Agreement and Final Order
In the Manner of: Window Universe Cleveland, LLC
Docket No. TSCA-05-2021-0011

Window Universe Cleveland, LLC Respondent

8/31/21

Date



Mr. Andrew Sykora
Owner
Window Universe Cleveland, LLC

Consent Agreement and Final Order
In the Manner of: Window Universe Cleveland, LLC
Docket No. TSCA-05-2021-0011

United States Environmental Protection Agency, Complainant

9/2/21

Date

Harris, Michael Digitally signed by Harris,
Michael
Date: 2021.09.02 08:04:55
-05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Consent Agreement and Final Order
In the Matter of: Window Universe Cleveland, LLC
Docket No. TSCA-05-2021-0011

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.

Date

ANN COYLE

Digitally signed by ANN COYLE
Date: 2021.09.08 10:18:37
-05'00'

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

Consent Agreement and Final Order
In the Matter of: Window Universe Cleveland, LLC
Docket Number: TSCA-05-2021-0011

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 September 8, 2021, this day in the following manner to the addressees:

Copy by e-mail to
Respondent:

Mr. Andrew K. Sykora
Owner
Window Universe Cleveland, LLC
17411 Detroit Avenue
Lakewood, Ohio 44107
asykora@windowuniversecleveland.com

Copy by e-mail to
Attorney for Respondent:

Richard D. Panza
rpanza@wickenslaw.com

Copy by e-mail to
Attorney for Complainant:

Christopher Grubb
grubb.christopher@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

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