

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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: In the Matter of :
: :
: **Housing Authority of the City of** : CONSENT AGREEMENT
: **Passaic** : AND
: : FINAL ORDER
: :
: Respondent : Docket No. TSCA-02-2023-9169
: :
: Proceeding under Section 16(a) of the Toxic :
: Substances Control Act, 42 U.S.C. Section :
: 2615(a). : x

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2689. . . of this

title [Section 409 of TSCA, 15 U.S.C. §2689] shall be liable to the United States for a civil penalty. . . .” EPA alleges that the Housing Authority of the City of Passaic (hereinafter “HACP” or “Respondent”) violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, by failing to comply with Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. § 4852d, and the federal regulations promulgated pursuant to TSCA and the Act at 40 C.F.R. Part 745, Subpart F (“Lead Disclosure Rule”) and Subpart E (“Renovation, Repair & Painting Rule” or “RRP Rule”). Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (“Complainant”) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Respondent (collectively, the “Parties”) agree, following a series of settlement conferences, that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Act in response to findings that low-level lead poisoning was 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 household dust containing 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 considered 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 Section 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d, and Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (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 (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 (the “Abatement Rule”). The revised Subpart E is now known as the “RRP Rule.”

4. Pursuant to TSCA Section 401(17), 40 C.F.R. § 745.103 and 40 C.F.R. § 745.83, the housing stock addressed by 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).

5. The Disclosure Rule defines Lessor as any entity that offers Target Housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

6. The Disclosure Rule, in pertinent part, requires Lessors of Target Housing to provide lessees with an EPA-approved lead hazard information pamphlet and include within the lease or as an attachment to the lease the following elements:

- i. a Lead Warning Statement;
- ii. a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof;
- iii. a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available; and
- iv. a statement by the lessee affirming receipt of the information set out in §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(4).

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirements of the Disclosure Rule is a violation of TSCA Sections 408 and 409, 15 U.S.C. §§ 2688 and 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA Sections 408 and 409, specific civil penalties apply under TSCA Section 16.

8. 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.

9. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in Target Housing.

10. For purposes of complying with Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 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, revised September 2011).

11. 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.

12. 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. 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. . . The term renovation does not include Minor Repair and Maintenance Activities.”

13. 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.

14. 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.

15. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent, or the violations alleged in this CA/FO, Firms performing Renovations in Target Housing are, among other things, required to:

- i. Obtain an EPA certification for the Firm prior to performing Renovations;
- ii. Assign a certified renovator, and ensure that a certified renovator either performs the Renovation or directs a properly trained worker to perform the Renovation;
- iii. Provide the Pamphlet to the owner and adult occupant (if the owner does not occupy the unit) before Renovation activities begin and obtain written verification that the Pamphlet was provided;
- 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).

16. Pursuant to Sections 408 and 409 of TSCA, 15 U.S.C §§2688 and 2689, 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 Sections 408 and 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 408 and 409 of TSCA, 15 U.S.C §§ 2614 and 2688 and 2689.

17. 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.

EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. Respondent is the Housing Authority of the City of Passaic (HACP).

19. Respondent's primary place of business is located at 52 Aspen Place, Passaic, New Jersey 07055.

20. Respondent is a public housing authority formed under the laws of the State of New Jersey for the purpose of providing decent, safe, and sanitary public housing in the City of Passaic.

21. Among the public housing Respondent administers are Alfred Speer Village (six multi-unit buildings located at 24 State Street and 11, 19, 23, 33, and 45 Aspen Place) and Vreeland Village (ten multi-unit buildings located at 200, 201, 202, 203, 210, 220, 221, 222, 224 and 226 Sixth Street). Each of the buildings in Alfred Speer Village and Vreeland Village was built prior to 1978.

22. Alfred Speer Village and Vreeland Village are Target Housing.

23. As part of its mission, Respondent leases apartment units in Alfred Speer Village and Vreeland Village for occupancies greater than 100 days. In so doing, HACP staff

sign, and have signed, the leases and lease renewals as “Management” of the apartment units at Alfred Speer Village and Vreeland Village.

24. At all times relevant, HACP is and was a Lessor subject to the Disclosure Rule.

25. As part of its mission, Respondent maintains the buildings in Alfred Speer Village and Vreeland Village. In so doing, HACP employees perform Renovations of the common areas and individual apartment units.

26. At all times relevant, HACP is and was a Firm subject to the RRP Rule. HACP sought and obtained initial certification from EPA as a Firm on November 16, 2021.

27. On February 14, 2019, a credentialed EPA inspector conducted a Compliance Evaluation Inspection (“CEI”) pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, at Respondent’s Alfred Speer Village. During this inspection, the EPA inspector collected information relevant to Respondent’s compliance with the Lead Disclosure Rule, including leases, lead-based paint testing and evaluation reports prepared for several apartment units and common areas, and a Lead Hazard-free Certificate for one apartment. The EPA inspector also collected copies of work orders for work subject to the RRP Rule performed by HACP employees.

28. EPA staff sent an Information Request Letter (“IRL”) on February 28, 2019, to the Respondent requesting additional information and records concerning Respondent’s compliance with the RRP Rule when conducting window replacements (Renovations subject to the RRP Rule) at both Alfred Speer Village and Vreeland Village.

29. On March 19, 2019, the EPA inspector conducted a CEI at the HACP main office where leases for Vreeland Village were kept. The purpose of the inspection was to evaluate Respondent’s compliance with the Lead Disclosure Rule at Vreeland Village.

30. During the March 19, 2019, CEI at the HACP main office, the EPA inspector reviewed eleven (11) randomly selected leases, including at least one lease for an apartment in each building of Vreeland Village.

31. At EPA's March 19, 2019, CEI, the EPA inspector observed that for 9 of eleven (11) apartments Respondent did not include within the leases reviewed a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge thereof.

32. At EPA's March 19, 2019, CEI, a HACP representative informed EPA's inspector that lead-based paint testing had been conducted around July 2016. However, no evidence or results of such testing were provided to EPA or referenced in any of the leases reviewed.

33. On April 3, 2019, EPA sent an email to HACP requesting specific leases for Alfred Speer Village and Vreeland Village apartments. Subsequently, on April 16, 2019, EPA visited HACP's main office and retrieved the requested copies of additional leases for Alfred Speer Village and Vreeland Village apartments.

34. On April 23, 2019, in the absence of a response to EPA's February 28, 2019, IRL EPA sent a second IRL to Respondent seeking all RRP Rule compliance information.

35. On August 8, 2019, August 9, 2019, and August 27, 2019, HACP submitted handwritten responses to EPA's April 23, 2019, IRL.

36. Respondent's August 8, 2019, response to EPA's April 23, 2019, IRL indicated that no Renovations had been conducted at Vreeland Village between February 2016 and February 2019. Respondent answered "N/A" to all other questions (such as Firm certification,

assignment of certified Renovators, compliance with work standards during Renovations, and recordkeeping) regarding RRP compliance.

37. Respondent's August 27, 2019, response to EPA's April 23, 2019, IRL indicated that no Renovations had been conducted at Alfred Speer Village between February 2016 and February 2019. Respondent answered "N/A" to all other questions (such as Firm certification, assignment of certified Renovators, compliance with work standards during Renovations, and recordkeeping) regarding RRP compliance.

38. In its August 9, 2019, response to EPA's April 23, 2019, IRL Respondent submitted work orders which revealed that HACP employees routinely performed Renovations, such as window replacements, at both Vreeland Village and Alfred Speer Village.

39. On September 19, 2019, EPA visited the HACP main office to review and copy additional Vreeland Village and Alfred Speer Village lease files and lead disclosure documents that were not previously provided to EPA.

40. During EPA's September 19, 2019, inspection, EPA's inspector described to Respondent the compliance deficiencies observed during EPA's February and March 2019 inspections with respect to the Disclosure Rule and RRP Rule and provided a website link to compliance information on the RRP Rule.

41. Based on the aforementioned EPA inspections and Respondent's response(s) to EPA's IRLs, EPA determined that Respondent, between at least January 2017 to February 2019, had violated the Lead Disclosure Rule times when leasing multiple apartment units in the Alfred Speer and Vreeland Villages by failing to include all required elements within the leases or as an attachment to the leases for each unit.

42. Specifically, EPA documented the following violations of the Lead Disclosure

Rule committed by Respondent:

LEAD DISCLOSURE RULE VIOLATIONS

<u>Lessee Address</u>	<u>Date of Lease</u>	<u>Description of Violation</u>	<u>Statutory and Regulatory Citation of Violation</u>
Vreeland Village Apt. 200-2B Apt. 224-1B	April 1, 2018 June 1, 2017	Failure to Include Lead Warning Statement as an attachment or within the contract to lease	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(1)
Vreeland Village Apt. 200-2B Apt. 224-1B Apt. 220-3B Apt. 222-3A Apt. 226-1A Apt. 226-3D	April 1, 2018 June 1, 2017 January 1, 2018 March 1, 2018 May 1, 2018 April 1, 2018	Failure to Include in Lease a Statement by the Lessor Disclosing the Presence of Lead- Based Paint/Hazards or Lack of Knowledge	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(2)
Vreeland Village Apt. 200-2B Apt. 224-1B Apt. 220-3B Apt. 222-3A Apt. 226-1A Apt. 226-3D Apt. 200-2D Apt. 200-3B Apt. 221-3C Apt. 221-3D Apt. 226-1D	April 1, 2018 June 1, 2017 January 1, 2018 March 1, 2018 May 1, 2018 April 1, 2018 February 1, 2019 March 1, 2018 July 1, 2018 September 1, 2017 March 1, 2018	Failure to Include in Lease a List of Records or Reports Pertaining to Lead-Based Paint or Indicate No Such Records or Reports are Available	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(3)
Vreeland Village Apt. 200-2B Apt. 224-1B Apt. 221-3D	April 1, 2018 June 1, 2017 September 1, 2017	Failure to Include in Lease A Statement by Lessee Affirming Receipt of Information of Presence of Lead- Based Paint, List of Reports or Records of Lead- Based Paint and the Lead- Based Paint Information Pamphlet	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(4)
Vreeland Village Apt. 200-2B Apt. 224-1B Apt. 226-3D	April 1, 2018 June 1, 2017 April 1, 2018	Failure to Include Signatures of Lessors, Agents, and Lessees Certifying the Accuracy of Their Statements Regarding Lead-Based Paint and/or Lead- Based Paint Hazards	TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(6)

<p>Alfred Speer Village Apt. 24-3E Apt. 24-6D Apt. 24-6A</p>	<p>July 1, 2018 February 1, 2018 March 15, 2017</p>	<p>Failure to Provide Lessees with EPA- approved Lead Hazard Information Pamphlet Prior to Obligation Under Lease</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.107(a)(1)</p>
<p>Alfred Speer Village Apt. 24-3E Apt. 24-6D Apt. 24-6A Apt. 19-2C Apt. 19-5C Apt. 19-8F Apt. 45-4C Apt. 45-7F Apt. 45-8D Apt. 45-4F</p>	<p>July 1, 2018 February 1, 2018 March 15, 2017 April 1, 2019 July 1, 2017 June 1, 2017 January 1, 2019 January 16, 2018 January 1, 2017 January 15, 2017</p>	<p>Failure to Include in Lease a Statement by the Lessor Disclosing the Presence of Lead- Based Paint/Hazards</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(2)</p>
<p>Alfred Speer Village Apt. 24-3E Apt. 24-6D Apt. 24-6A Apt. 19-2C Apt. 19-5C Apt. 19-8F Apt. 45-4C Apt. 45-7F Apt. 45-8D Apt. 45-4F</p>	<p>July 1, 2018 February 1, 2018 March 15, 2017 April 1, 2019 July 1, 2017 June 1, 2017 January 1, 2019 January 16, 2018 January 1, 2017 January 15, 2017</p>	<p>Failure to Include in a Lease a List of Records or Reports Pertaining to Lead-Based Paint</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(3)</p>
<p>Alfred Speer Village Apt. 11-2H Apt. 11-5A</p>	<p>November 15, 2018 February 1, 2019</p>	<p>Failure to Include in a Lease a Statement by Lessee Affirming Receipt of Information of Presence of Lead- Based Paint, List of Reports or Records of Lead-Based Paint and the Lead-Based Hazard Information Pamphlet</p>	<p>TSCA §§ 15 and 409; Section 1018 of the Act; and 40 C.F.R. § 745.113(b)(4)</p>

43. Each of Respondent’s failures to comply with the requirements of the Lead Disclosure Rule as identified in the chart in the preceding paragraph constitutes an independent violation of TSCA and the Act for which penalties may be individually assessed.

44. Based on the aforementioned EPA inspections and Respondent’s response(s) to EPA’s IRLs, EPA determined that Respondent, between January 2018 and June 2019, had violated the RRP Rule by performing Renovations (specifically, window replacements) in apartment units in the Alfred Speer Village and Vreeland Village buildings: 1) prior to becoming an EPA certified Firm; 2) without assigning a certified Renovator to each renovation; and 3) without establishing or maintaining records in accordance with the applicable requirements of 40 C.F.R. Part 745, Subpart E.

45. Specifically, EPA identified the following violations of the requirements of the RRP Rule committed by Respondent:

RENOVATION REPAIR AND PAINTING RULE VIOLATIONS

Lessee Address	Date of Renovation Window Replacement	Description of Violation	Statutory and Regulatory Citation of Violation
<u>Vreeland Village</u> 220 Sixth Street, Apt 3B <u>Alfred Speer Village</u> 24 State Street Apt. 2G 24 State Street Apt 4C 19 Aspen Place Apt 2A	January 4, 2018 May 1, 2019 June 26, 2019 February 19, 2019	Failure to Obtain Firm Certification	TSCA §§ 15 and 409; and 40 C.F.R. §§ 745.81(a)(2), 745.89(a)
Same addresses as above	Same dates as above	Failure of Firm to Assign a Certified Renovator to a Renovation	TSCA §§ 15 and 409; and 40 C.F.R. § 745.89(d)(2)
Same addresses as above	Same dates as above	Failure or Refusal to Establish and Maintain Records or Make Available for Copying	TSCA §§ 15 and 409; and 40 C.F.R. § 745.87(b)

46. Each of Respondent's failures to comply with the requirements of the RRP Rule as identified in the chart in the preceding paragraph constitutes an independent violation of TSCA for which penalties may be individually assessed.

47. On June 8, 2021, EPA sent Respondent a Notice of Opportunity to Confer letter setting out the alleged violations of RRP and Lead Disclosure Rule requirements and extending an offer to meet. Following the issuance of the June 8, 2021, letter, the Parties met numerous times. At these meetings, EPA provided compliance assistance and Respondent demonstrated a commitment to compliance with the LDR and RRP Rules, including immediate institution of significant compliance measures and the development of the additional measures described below and incorporated into this CA/FO.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent shall comply with the following terms:

48. For the purpose of this Consent Agreement, Respondent: (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged herein; and (b) neither admits nor denies the specific factual allegations contained in the "EPA Findings of Fact and Conclusions of Law" Section above.

49. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 *et seq.*, and the Act, 42 U.S.C. § 4852d, and the federal regulations at 40 C.F.R. Part 745.

Certifications

50. Respondent certifies that it is currently in compliance with the statutory provisions of subchapter IV of TSCA, 15 U.S.C. §§ 2681- 2692, Section 1018 of the Act, 42 U.S.C. § 4852d, and the federal regulations codified at 40 C.F.R. Part 745.

51. Respondent certifies that EPA has provided Respondent with information and compliance assistance regarding the requirements of the Disclosure Rule and the RRP Rule, and of its compliance obligations thereunder.

52. Respondent certifies that it is aware of the lead-based paint regulations promulgated by the United States Department of Housing and Urban Development (“HUD”) as the Lead Disclosure Rule, 24 C.F.R. Part 35 Subpart A, and the Lead Safe Housing Rule, 24 C.F.R. Part 35, Subparts B, H, L and R, and of its compliance obligations thereunder.

Compliance Obligations

53. To facilitate its future compliance with EPA’s lead-based paint regulations, Respondent developed and adopted a “Lead Disclosure Compliance Plan” and “RRP Compliance Plan,” each dated April 1, 2022. Respondent also developed and adopted a Standard Operating Procedure guidance, dated April 1, 2022, setting out directions for HAPC staff in the event an Abatement of lead-based paint or a lead-based paint hazard in Target Housing managed by Respondent is to be performed (“Abatement SOP”). The Lead Disclosure Compliance Plan with appendices, RRP Compliance Plan with appendices, and Abatement

SOP with appendices are annexed hereto as Attachments 1, 2 and 3, respectively, and each is fully incorporated by reference into this CA/FO.

54. Respondent shall implement the Lead Disclosure and RRP Compliance Plans and the Abatement SOP at all Target Housing as that term is defined by 40 C.F.R. § 745.83, it manages. Respondent shall also implement the RRP Plan and, if applicable, the Abatement SOP, in any child-occupied facilities it acquires or creates within the compliance period of this CA/FO. Implementation of the Lead Disclosure and RRP Compliance Plans and Abatement SOP is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to compliance therewith. Adherence to the provisions of the Lead Disclosure and RRP Compliance Plans and Abatement SOP shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745, or any other federal, state, or local lead-based paint requirements, nor a defense to the failure to do so.

55. Respondent shall submit reports quarterly (i.e., every ninety (90) days) (hereinafter “Quarterly Reports”) for a period of one year, with the first Quarterly Report due ninety (90) calendar days (“the Reporting Period”) from the date of the Regional Administrator’s signature of the Final Order. The Reports shall be submitted to EPA and document the Respondent’s implementation of the Lead Disclosure and RRP Compliance Plans (and, if an Abatement lead- based paint or a lead-based paint hazard is started in the relevant period, of the Abatement SOP).

56. Each Quarterly Report shall be submitted by Respondent and received by EPA no later than fifteen (15) calendar days from the end of the Reporting Period.

57. With regard to the Lead Disclosure Compliance Plan, each Quarterly Report shall state the total number of leases and lease renewals for Target Housing entered into in the

previous ninety (90) days. The Report shall also include the following additional compliance information and documents:

- a. The complete address of the units leased (building address and individual apartment unit numbers, if any).
- b. If the units leased are located anywhere other than Alfred Speer Village or Vreeland Village, indicate the type of residence (house, apartment, multi-residence building) and the original construction year of the building.
- c. The effective date of the lease and the date the lease disclosure form was signed.
- d. The name of each lessee and, if other than an employee of HAPC, the name and title of the agent signing for lessor.
- e. The Lead Disclosure Rule Compliance Plan checklist (see Appendix III of the Lead Disclosure Compliance Plan) for ten (10) leases or lease renewals entered into during the preceding quarter at Alfred Speer Village and Vreeland Village (twenty (20) completed checklists total: ten (10) from each Village) as well as each of the leases or lease renewals for each of the checklists.
- f. Completed Lessor Disclosure Forms (see Appendix II of the Lead Disclosure Compliance Plan) for ten (10) leases or lease renewals entered into during the preceding quarter at Alfred Speer Village and Vreeland Village (twenty (20) completed forms total; ten (10) from each Village) as well as each of the leases or lease renewals for each of the Lessor Disclosure Forms.

58. With regard to the RRP Compliance Plan, each Quarterly Report shall provide a narrative summary of the Renovations (see definition in Paragraph 12, above, as reflective of

the Renovation definition in 40 C.F.R. Section 745.83, for what constitutes a Renovation for purposes of this paragraph) commenced (even if still underway at the time of the report) during the previous ninety (90) days, and shall include the following additional compliance information and documents:

a. The complete address of any Renovation conducted or underway at the time of the report and the areas renovated or to be renovated (e.g., building address, apartment unit number(s), common area, exterior).

i. If conducted at Target Housing or a Child Occupied Facility located anywhere other than Alfred Speer Village or Vreeland Village, also include:

- The type of residence (e.g., multi-family apartment building) or child-occupied facility (e.g., day care center)
- If a multi-family building, indicate the number of floors and number of apartments on each floor.
- The original construction year of the building(s).

b. The details of the Renovation work performed/still to be performed.

c. Whether or not the Renovation site was/will be occupied or in use at the time of the renovation, and steps taken or to be taken to protect occupants.

d. If a Firm other than HACP conducted or is to conduct the work, the name, address, and telephone number of the Firm who was/will be performing the work. Include a copy of the Firm's EPA-issued certification.

e. The name, address and telephone number of the individual who was/will be the on-site certified Renovator for the work and include a copy of the Renovator's training certificate.

f. The scheduled dates of the Renovation, including start date and projected finish date.

g. A completed Pre-Renovation Occupant Acknowledgement Form, if applicable (Appendix V of the RRP Compliance Plan).

h. A completed Common Area Renovation Notification form, if applicable (Appendix VI of the RRP Compliance Plan).

i. A completed Pre-Renovation RRP Compliance Checklist (Appendix VII of the RRP Compliance Plan) for all renovations conducted in the quarter.

j. A completed Post-Renovation Cleaning Verification Form (Appendix VIII of the RRP Compliance Plan) for all renovations completed in the quarter.

59. If an abatement is commenced in Target Housing managed by Respondent in a quarter for which a report is required, then Respondent shall include the following information in the Quarterly Reports for that period and any periods in which the work continues:

a. The Lead Abatement Compliance Checklist for any such abatement (Appendix II of the Abatement SOP).

b. Complete address of the building where the abatement took or is taking place and the locations within the building where lead-based paint and/or lead-based paint hazards were detected and abated or to be abated.

c. At each location where abatement took or is taking place, the components on which lead-based paint and/or lead-based paint hazards were detected and abated or to be abated.

d. State the reason for the abatement and provide relevant documentation (*e.g.*, order following an elevated blood lead level in a minor resident; result of any testing or risk assessment conducted; specific HUD policy or directive).

e. The name and contact information of the [New Jersey Department of Community Affairs \(NJDCA\) certified lead abatement contractor](#) that was hired to perform the abatement work, along with a copy of the contractor's lead abatement certification.

f. The name and contact information of the certified abatement supervisor assigned to oversee each abatement, along with a copy of each abatement supervisor's NJDEP and/or EPA-issued certificate

g. A copy of the NJDCA Notification of Lead Abatement Form.

h. A copy of the occupant protection plan(s) (*see* 40 C.F.R. § 745.227(e)(10)) prepared for the abatement.

i. Provide a copy of the final Abatement Report (*see* 40 C.F.R. § 745.227(e)(10)) prepared for the abatement.

60. If no activities subject to the Disclosure or RRP Compliance Plans or the Abatement SOP are undertaken in a given quarter, Respondent shall so state in the Quarterly Report for that quarter. For any activity in Target Housing that Respondent determines is exempt from the RRP Rule based solely on the results of lead-based paint testing, Respondent

must provide test results that meet the requirements of 40 C.F.R. § 745.82 in the relevant quarterly report.

61. The Quarterly Reports shall be sent to the following addressee, by email:

Meghan LaReau
Enforcement Officer
Lead Paint and Pesticides Compliance Section
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837
LaReau.Meghan@epa.gov

and

Bruce H. Aber, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Aber.Bruce@epa.gov

and

Eric M. Bernstein, Esq.
General Counsel, Housing Authority of the City of Passaic
c/o Eric M. Bernstein and Associates, LLC
34 Mountain Boulevard, Building A
P.O. Box 4922
Warren, New Jersey 07059-4922
embernstein@embalaw.com

62. Each Quarterly Report shall contain the following certification signed by an appropriate official of Respondent:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information and to the best of my knowledge and belief, the information is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

63. Within fifteen (15) business days following receipt of each Quarterly Report, EPA will notify Respondent of any deficiencies EPA identifies in the Report. If EPA identifies deficiencies in the information reported, the notice shall so state and Respondent shall have ten (10) business days from receipt of notice to provide the missing information. If EPA identifies deficiencies that appear to indicate an underlying failure of substantive compliance with the relevant Rule, the notice shall so state and require Respondent to provide a narrative response and/or action to correct the underlying compliance deficiencies. Respondent shall have fifteen (15) business days from receipt of notice in which to provide a narrative response explaining the apparent compliance failure and, if necessary, indicating how Respondent has corrected the identified compliance failure or plans to (including a detailed schedule for achieving compliance). The time to respond and/or correct any deficiencies shall not extend or delay the due date for submitting the next scheduled Quarterly Report unless otherwise agreed to in writing by both Parties.

64. If in the future EPA believes that any of the certified information provided in the Quarterly Reports is inaccurate, EPA will advise Respondent, in writing, of its belief and its basis for such and will afford Respondent thirty (30) calendar days from receipt of notice to respond to EPA. If EPA still believes the certification(s) is (are) mostly inaccurate, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq. or any other applicable law.

65. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the Quarterly Report(s) as required herein, Respondent shall notify EPA in writing within fourteen (14) days of the delay or Respondent's knowledge of the

anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the cause of the delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the submission of the Quarterly Report, caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such event.

b. If the parties agree that the delay or anticipated delay in the submission of the Quarterly Report or, if applicable, the SOP Abatement LBP Report, has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period of no longer than the Delay resulting from such circumstances.

c. In the event that EPA does not agree that a delay in submitting the Quarterly Reports has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its belief and its basis for such and will afford Respondent fifteen (15) business days from receipt of notice to respond to EPA. If EPA still believes that the delay has not been or will not be caused by circumstances beyond the control of the Respondent, then any such delays shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent.

Penalty

66. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, EPA's "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP)," dated August 2010, and EPA's "Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy," dated December 2007, EPA considered the nature, circumstances, extent, and gravity of the alleged violations; Respondent's ability to pay; the effect of the penalty on Respondent's ability to continue its operations; Respondent's history of prior violations; Respondent's degree of culpability; any economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors, EPA determined, and Respondent agrees that a civil penalty in the amount of **One Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety-Nine Dollars** (\$199,999) is assessed against Respondent for the TSCA violations alleged herein.

67. Pursuant to 40 C.F.R. § 22.31(c), Respondent and EPA agree that payment of the civil penalty by Respondent is deferred until EPA issues a remittance or non-remittance notice.

68. EPA agrees to remit the entire penalty and issue a remittance notice upon Respondent's completion, to EPA's satisfaction, of the compliance work obligations specified in Paragraphs 53 to 62 above.

69. Unless the Parties agree in writing to a different date, EPA shall issue a remittance or non-remittance notice no later than one hundred and twenty (120) calendar days from the date of EPA's receipt of the final Quarterly Report.

70. If EPA in its sole discretion determines that the Respondent has failed to implement its compliance obligations under this CA/FO fully, timely, and satisfactorily, EPA may issue a non-remittance notice requiring Respondent to pay the amount of the civil penalty referred to in Paragraph 66, above, plus interest (at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)) accrued from the date of the issuance of the Final Order for this settlement. The non-remittance notification will set forth the details of the penalty payment procedures and calculations. In no event shall Respondent pay any portion of the non-remitted civil penalty or interest thereon from federal funds restricted from use for such purpose by statute or regulation as determined by HUD.

71. Prior to making a determination that Respondent has failed to perform the compliance obligations contained herein and issuing a non-remittance notice, EPA will give Respondent written notice(s) of deficiencies and provide Respondent with thirty (30) calendar days to cure such deficiencies.

72. The parties shall use their best efforts informally and in good faith to resolve disputes and differences of opinion that may arise concerning provisions of this Order. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by EPA pursuant to this Order with respect to the following: (1) adequacy, completeness, or timeliness of a Quarterly Report; or (2) an EPA determination to issue a non-remittance notice, pursuant to Paragraph 69 of this CA/FO, Respondent shall notify EPA in writing of such objections and the basis (bases) therefore within thirty (30) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (bases) for Respondent's position, and any matters Respondent considers necessary for EPA's determination. Following

EPA's receipt of such written notice, EPA will provide Respondent with a decision in writing on the pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

73. Respondent voluntarily and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement. Full payment or remittance of the assessed penalty shall only resolve Respondent's liability for federal civil penalties for the alleged violations described in Paragraphs 41 through 46 above. Full payment or remittance of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions or violations of law.

74. The civil penalty provided for herein is a "penalty" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state, or local law.

General Provisions of Settlement

75. Any responses, documentation, and communication submitted in connection with this Consent Agreement shall be sent to the EPA addressee(s) identified in Paragraph 61 above, by email. Unless the above-named EPA contacts are later advised otherwise in writing by email, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Pamela Mitchell
Executive Director
Housing Authority City of Passaic
52 Aspen Place
Passaic, New Jersey 07055
pmitchell@passaichousing.org

Eric M. Bernstein, Esq.
General Counsel, Housing Authority of the City of Passaic
c/o Eric M. Bernstein and Associates, LLC
34 Mountain Boulevard, Building A
P.O. Box 4922
Warren, New Jersey 07059-4922
em Bernstein@embalaw.com

76. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk via electronic mail. Delivery of the fully executed documents to the email addressee in Paragraph 75 above, shall constitute Respondent's receipt and acceptance of the CA/FO.

77. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and knowingly and voluntarily consents to its issuance and its terms. Respondent agrees that this CA/FO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.

78. Nothing in this document is intended nor shall be construed to waive, prejudice, or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law 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 other applicable provision of law.

79. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the CA/FO and any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

80. Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO. Any failure by Respondent to perform fully any

requirement herein will be considered a violation of this CA/FO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

81. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the Act, the regulations promulgated thereunder, or any other provisions of federal, state, or local law. Nothing in this CA/FO shall be construed as a ruling on, or determination of, any issue related to any federal, state, or local permit.

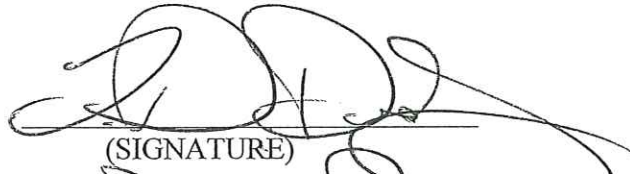
82. The terms of this CA/FO bind the Respondent, its successors, and assigns. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

83. Each party hereto agrees to bear its own costs and fees in this matter.

Housing Authority of the City of Passaic

RESPONDENT:

BY:


(SIGNATURE)

NAME:

L. Daniel DeRosa
(PLEASE PRINT)

TITLE:

Chairman of the Housing Board

DATE:

1/16/2023

COMPLAINANT:

For Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: _____

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Housing Authority of the City of Passaic, Docket Number TSCA-02-2023-9169. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Date: _____

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by email to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by Email:

Pamela Mitchell
Executive Director
Housing Authority City of Passaic
52 Aspen Place
Passaic, New Jersey 07055
pmitchell@passaichousing.org

Eric M. Bernstein
c/o Eric M. Bernstein & Associates, LLC
Attorneys At Law
34 Mountain Blvd., Bldg. A
Warren, New Jersey 07059
embernstein@embalaw.com

Dated: _____
New York, New York