

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X	:	
In the Matter of	:	
	:	
Becker Corp. Builders,	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
	:	<u>FINAL ORDER</u>
	:	
Respondent	:	Docket No.
	:	TSCA-02-2023-9281
	:	
Proceeding under Section 16(a) of	:	
the Toxic Substances Control Act	:	
-----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" or "the Act"), 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 Becker Corp. Builders (hereinafter “Respondent”) violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, by failing to comply with the federal regulations promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745, including the requirements for Residential Property Renovation at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (“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 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.

EPA FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. Respondent Becker Corp. Builders is a corporation organized under the laws of New York State.
2. Respondent’s primary place of business is located at 79 Orange Avenue, Suffern, New York 10901.
3. Respondent is a “Firm” doing Renovation work on properties in New York and New Jersey that include “Target Housing,” as those terms are defined by 40 C.F.R. § 745.83 and 15 U.S.C. § 2681(17).
4. Specifically, Respondent conducted Renovations at the following Target Housing in 2018 and 2019:

- 22 Milrose Lane, Chestnut Ridge, NY
- 92 Brewery Road, New City, NY
- 5 Beckett Court, Monsey, NY
- 4 Ashwood Drive, Airmont, NY
- 40 Abbey Court, Ramsey, NJ
- 16 Halley Drive, Pomona, NY

5. At all times relevant, Respondent is and was a Firm subject to the RRP Rule.

Respondent sought and obtained initial certification, NAT-F204048, from EPA as a firm on June 10, 2019, which expires on June 24, 2024.

6. On July 17, 2019 representatives of EPA Region 2's Lead Paint and Pesticides Compliance Section (LPPCS) conducted a firm records inspection and subsequent off-site document review of Respondent's Renovations in the Target Housing listed in Paragraph 4.

7. Based on the aforementioned EPA records inspection and document review, EPA determined that Respondent had violated the RRP Rule.

8. Specifically, EPA identified the following violations of the RRP Rule committed by Respondent during the Renovations conducted at the Target Housing listed in Paragraph 4.

- **Violation of 40 C.F.R. § 745.81(a)(2)(ii):** Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA.
- **Violation of 40 C.F.R. §745.84(a)(1):** Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet.
- **Violation of 40 C.F.R. §745.87(b):** Failure or refusal to establish and maintain records, or to make available such records.

- **Violation of 40 C.F.R. §745.89(d)(2)**, Failure of a firm to assign a certified renovator to a Renovation.

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

10. On February 2, 2023, EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer letter setting out the alleged violations of RRP requirements and extending an offer to meet. Following the issuance of the February 2, 2023, letter the Parties met on April 6, 2023 and July 17, 2023 to discuss the matter. During these discussions, EPA provided compliance assistance and Respondent demonstrated a commitment to compliance with the RRP Rules.

11. On March 24, 2023, Respondent submitted to EPA three years of tax returns documenting its financial condition in support of settlement.

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, 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:

1. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

2. Respondent certifies that, as of the date of execution of this CA/FO, it is in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745.

3. For the purposes 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 described in the “Findings of Fact and Conclusions of Law” Section, above; and (b) neither admits nor denies the specific factual allegations contained in the “Findings of Fact and Conclusions of Law” Section, above.

4. Respondent shall pay, by cashier’s or certified check, by Fedwire, or by online payment, a civil penalty in the amount of Twenty Thousand Dollars (\$20,000) plus interest in accordance with the payment terms and schedule set forth in Paragraphs 6(a) through (e) below and according to one of the payment transmittal methods in Subparagraph a or b below.

a. If payment is made by check, then each such check shall be made payable to “Treasurer of the United States of America” and shall be mailed by one of the following two methods:

STANDARD DELIVERY
United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O Box 979078
St. Louis, MO 63197-9000

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS,
USPS, Certified, Registered, etc.)
United States Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Each check shall be identified with a notation thereon listing the case name, In the Matter of Becker Corp Builders and shall bear the Docket No. TSCA-02-2023-9281;

b. If payment is made electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

- 1) Amount of Payment;
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004;**
- 5) Field Tag 4200 of the Fedwire message should read: **D68010727 Environmental Protection Agency;**
- 6) Name of Respondent: Becker Corp Builders, and
- 7) Case Docket Number **TSCA-02-2023-9281.**

c. If payment is made via on-line payment(s), Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page, select Continue under “EPA Miscellaneous Payments—Cincinnati Finance Center” and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to Somma.Jerry@epa.gov and Wise.Milton@epa.gov with **In the Matter of Becker Corp Builders, Docket No. TSCA-02-2023-9281** as the subject line.

5. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments.

6. The civil penalty of \$20,000, set forth in Paragraph 4 of this Consent Agreement, plus applicable interest at the rate of three percent (3%) per annum on the outstanding principal balance (total interest payments to equal \$262.50) for a total payment (principal plus interest) of \$20,262.50, shall be paid in four installments as follows:

- a. 1st Payment: The first payment, in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)**, consisting of a principal payment of \$5,000 and an interest payment of \$0.00, shall be received by EPA *on or before* thirty (30) calendar days following the date on which the Regional Administrator signs the Final Order (due date #1).
- b. 2nd Payment: The second payment, in the amount of **FIVE THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$5,150.00)** consisting of a principal payment of \$5,000 and an interest payment of \$150.00, shall be received by EPA *on or before* one hundred and forty days (140) calendar days following the date on which the Regional Administrator signs the Final Order (due date #2).
- c. 3rd Payment: The third payment, in the amount of **FIVE THOUSAND AND SEVENTY-FIVE DOLLARS (\$5,075.00)** consisting of a principal payment of \$5,000.00 and an interest payment of \$75.00, shall be received by EPA *on or before* two hundred and fifty (250) calendar days following the date on which the Regional Administrator signs the Final Order (due date #3).
- d. 4th Payment: The fourth payment, in the amount of **FIVE THOUSAND AND THIRTY-SEVEN DOLLARS AND FIFTY CENTS (\$5,037.50)**, consisting of a principal payment of \$5,000.00 and an interest payment of \$37.50, shall be received by

EPA *on or before* three hundred and sixty (360) calendar days following the date on which the Regional Administrator signs the Final Order (due date #4).

Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

7. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in the preceding paragraph, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late penalty charges described in Paragraphs 8 and 9 below, in the event of any such failure or default and remit such payment in accordance with the payment instructions in Paragraph 6 of this Consent Agreement.

8. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

9. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, in accordance with 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

10. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

11. Respondent certifies under penalty of law that:

a. the financial information in its March 24, 2023 submission is accurate, complete, and not misleading. EPA has relied on this submission in the negotiation of this settlement; and

b. it has requested of EPA that payment of the \$20,000 civil penalty be in installments because of the financial condition of Respondent, *viz.* a onetime payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.

12. 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 against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

13. The civil penalty and any stipulated penalty provided for herein are “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.

14. Respondent has developed a Compliance Plan addressing the following broad categories of compliance with TSCA and the RRP regulations codified at 40 C.F.R. Part 745 Subpart E.

- a. Obtaining, maintaining and renewing EPA RRP Firm certification(s);
- b. Obtaining, maintaining and renewing RRP certifications for individual renovators, which are issued by EPA-accredited training providers as a course completion certificate upon completion of the course;
- c. Training of Respondent's employees who perform RRP work;
- d. Creation and retention of records of compliance, including the Forms and checklist appended to the Compliance Plan and incorporated by reference into this CA/FO, for each Renovation performed by Respondent;
- e. Compliance with information distribution and occupant protection requirements prior to and during Renovations;
- f. Compliance with lead-safe work practice standards in the conduct of Renovations;
- g. Compliance with post-renovation cleaning verifications; and,
- h. Management of general contractor/subcontractor roles in Renovation projects.

The Compliance Plan with appendices is annexed hereto as Attachment 1 and fully incorporated herein.

15. Respondent shall implement the Compliance Plan at all target housing and child-occupied facilities at which Respondent performs renovations subject to the provisions of 40 C.F.R. Part 745. Implementation of the Compliance Plan is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to future compliance therewith. Adherence to the provisions of the Compliance Plan and compliance with the provisions of this Consent Agreement with regard to the implementation of the Compliance Plan shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745 nor a defense to the failure to do so.

16. Respondent shall submit reports to EPA documenting its implementation of the Compliance Plan (hereinafter “CP Reports”) in accordance with the following terms:

a. Respondent shall prepare four quarterly CP Reports to EPA for a period of one year commencing thirty (30) days following the date of signature of the Final Order. Each quarterly CP Report shall be submitted by Respondent and received by EPA no later than thirty (30) days following the end of the previous ninety (90) days period.

b. Each report shall summarize RRP activities commenced or performed and state the number of RRP Renovations undertaken during the preceding quarter. The Report shall also include the following for each Renovation conducted or underway:

(1) The complete address of any Renovation job conducted or underway at the time of the report and the areas renovated or to be renovated at that address (*e.g.*, apartment number(s), common area, exterior);

(2) The character of the Renovation (*e.g.*, residential home, multi-family apartment building, school building, conversion to housing);

(3) The specific renovation work to be performed;

(4) The original year of construction of the building(s);

(5) If a multi-family building, provide the number of floors and number of apartments per floor;

(6) Whether the Renovation site was/will be occupied at the time of the renovation;

(7) 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 his/her RRP training certificate;

(8) The name, address, and telephone number of the property owner;

(9) The scheduled dates of work, including start date and projected finish date;

(10) A Completed RRP Compliance Checklist for the Renovation (Appendix A to Attachment 1)

In the event that no work subject to the provisions of 40 C.F.R. Part 745 is undertaken in a given quarter, Respondent shall so state in the CP Report for that quarter.

c. The CP Reports Shall be sent to the following addressee via E-mail:

Jerry Somma
U.S. EPA – Region 2
Lead Paint and Pesticides Compliance Section
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837
Somma.Jerry@epa.gov

And

Carl R. Howard, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA – Region 2
290 Broadway – 16th Floor
New York, N.Y. 10007-1866
Howard.Carl@epa.gov

d. Each CP Report shall contain the following certification signed by an appropriate corporate official:

“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, I believe that 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.”

16. IRS Required Notice: Respondent should confer with its accountant for applicability. For purpose of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), and 26 C.F.R. §1.62-21(b)(2), performance of the requirement to implement the CP and to submit Quarterly Reports is restitution, remediation, or required to come into compliance with the law.

17. Respondent shall be subject to stipulated penalties for the failure to (1) provide the required substantive content in the CP Report and (2) submit the required CP Reports in a timely manner as follows:

- a. 1 – 30 days delinquent: \$500 per day
- b. 30 – 60 days delinquent: \$750 per day
- c. Each day past 61 days: \$1,000 per day

All Stipulated penalties are due and payable within thirty (30) calendar days following Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of the stipulated penalties shall be made in the same manner as prescribed in Paragraph 5 of this Consent Agreement for payment of the civil penalty. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment but need only be paid upon demand.

18. Following receipt of the CP Report EPA will either:

- a. Accept the CP Report(s) or
- b. Reject the CP Report(s) and notify Respondent, in writing, of deficiencies in the CP Report, granting Respondent an additional thirty (30) days in which to correct

any deficiencies and to resubmit the CP Report to EPA. If the identified deficiency(ies) in the CP report is/are the result of a failure of a substantive compliance, then EPA will provide Respondent with an opportunity to respond and/or correct any deficiencies. If EPA, after allowing Respondent thirty (30) days to correct and deficiencies, finds the same type of deficiencies remain, the EPA may seek stipulated penalties in accordance with Paragraph 17 of this Consent Agreement.

19. If in the future EPA believes that any of the information in the documentation or CP reports certified to, pursuant to Paragraph 15d of this Consent Agreement is inaccurate, EPA will advise Respondent of its belief and its basis for such and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certifications(s) is (are) mostly inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to Paragraph 17 of this Consent Agreement for non-compliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq* or any other applicable law.

20. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's written submission, EPA determines that Respondent failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days following receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.

21. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the CP Report(s) as required herein, Respondent shall notify EPA in writing within fourteen (14) days following 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 precise 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 CP Reports 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 CP 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 CP Report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any 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.

22. Any responses, documentation, and communication submitted in connection with this Consent Agreement shall be sent via E-mail to the EPA addressees identified in Paragraph 15c of this Consent Agreement. 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:

Christopher Becker
Becker Corp. Builders
79 Orange Avenue
Suffern, New York 10901
chris@beckercorp.com

And copy to:

Scott M. Albrecht, P.C.
198 Orange Avenue
Suffern, New York 10901
Scott@albrechtlaw.com

23. Respondent consents to the use of electronic signatures in this matter and to service upon it 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 the preceding paragraph shall constitute Respondent's receipt and acceptance of the CA/FO.

24. Full payment of the penalty described in Paragraph 4, in this Consent Agreement, shall only resolve Respondent's liability for federal civil penalties for the violations described in Paragraphs 8 and 9 in the above Findings of Fact and Conclusions of Law. Full payment 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 for any violations of law.

25. Respondent explicitly and knowingly consent 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.

26. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its terms.

27. Respondent consents to the issuance of the accompanying Final Order.

28. Respondent agrees that all terms of settlement are set forth herein.

29. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

30. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

31. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

32. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

33. The signatory for respondent certifies that her 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.

34. Each party hereto agree to bear its own costs and fees in this matter.

Becker Corp Builders

RESPONDENT: BY: Christopher J. Becker Digitally signed by Christopher J. Becker
Date: 2023.09.08
15:03:18 -04'00'

(SIGNATURE)

NAME: Christopher J. Becker
(PLEASE PRINT)

TITLE: Partner

DATE: 9/8/23

COMPLAINANT: *for* Anderson, Kate

Digitally signed by
Anderson, Kate
Date: 2023.09.12
11:08:43 -04'00'

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
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 Becker Corp Builders, Docket Number TSCA-02-2023-9281. 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 this day sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, electronically to the respective addressees listed below:

Via E-mail to:

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Christopher Becker
Becker Corp. Builders
79 Orange Avenue
Suffern, New York 10901
chris@beckercorp.com>

Scott M. Albrecht, Esq.
198 Orange Avenue
Suffern, NY 10901
Scott@albrechtlaw.com

ATTACHMENT 1

RENOVATION, REPAIR, AND PAINTING RULE COMPLIANCE PLAN

Becker Corp Builders

RENOVATION, REPAIR, AND PAINTING RULE COMPLIANCE PLAN

I. Introductory Statement.

This Renovation, Repair, and Painting ("RRP") Rule Compliance Plan ("the Plan") is being implemented in order to promote compliance by Becker Corp Builders. ("BCB") with the requirements for Residential Property Renovation, codified at Title 40 of the Code of Federal Regulations, Part 745, Subpart E, commonly known as the Renovation, Repair, and Painting (RRP) Rule. The Plan is designed to help ensure that covered companies and their employees, engaged in renovation activities involving residential "target housing" properties¹ and "child-occupied facilities,"² have the necessary guidance and/or training to conduct renovation activities in compliance with the RRP Rule.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE REQUIREMENTS IN THIS DOCUMENT AND THE RRP RULE, THE RRP RULE PREVAILS.

II. Objective.

The objective of the Plan is to ensure BCB's compliance with the RRP Rule. This Plan does not address compliance with any other lead-based paint laws or regulations of other federal, state, or local agencies.

III. Applicability

This Plan covers all BCB employees, contractors, and subcontractors working on projects involving the "renovation," as that term is defined at 40 C.F.R. § 745.83, of property originally constructed prior to 1978. Note, that in addition to pre-1978 residential structures and child-occupied facilities, the conversion of any class of property (*e.g.*, Commercial, Industrial, etc.) constructed prior to 1978 to residential use makes such property subject to the requirements of 40 C.F.R. Part 745 and this Plan.

¹ "Target Housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. Section 2681(17); see also, 40 C.F.R. § 745.223.

² "Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83.

The requirements of this Plan shall apply for a period of one year, commencing ninety (90) days from the date of signature of the Consent Agreement and Final Order.

IV. Procedures

This document, created and adopted by BCB, sets forth procedures which will address the following broad categories of compliance that apply to the Rule cited above: A) obtaining, maintaining and renewing the EPA RRP-Firm Certification(s); B) obtaining, maintaining and renewing RRP Certifications of Individual Renovators, which are issued by EPA- accredited training providers; C) On-the-job training of uncertified BCB employees who perform RRP work; D) Pre-renovation education of owners and occupants; E) Compliance with lead-safe work practice standards for renovation projects; F) Compliance with post-renovation cleaning verification; G) Creation and Retention of Records of Compliance; and H) Management of general contractor/subcontractor roles for RRP Rule projects.

a. Firm & Individual Certification(s).

RRP Rule - BCB has obtained EPA RRP Firm Certification for the RRP Rule under certificate number 108116, valid from June 11, 2019 to June 9, 2024. Prior to BCB's license expiring it will take the necessary steps to renew its firm's license. All renewals are now done electronically at <http://www2.epa.gov/lead-safe-certification-program>. BCB's individual Renovators' certifications shall be kept in an electronic file database that is monitored by BCB. As expiration dates near, Renovators shall be scheduled for a "Refresher" class at an EPA-accredited training provider. Once training is completed, certifications for individual renovators are issued by the training provider as a course completion certificate upon completion of the course.

b. Training of Respondent's Employees

RRP Rule - As the general contractor, whenever BCB undertakes a project, which is subject to the RRP Rule, it will ensure that an RRP Certified Renovator(s)

(appropriately trained individual(s) in possession of a current Renovator certificate issued by an EPA-accredited training provider (school)) is assigned to that project. The assigned Certified Renovator(s) may be an employee(s) of BCB, or of a subcontractor(s) BCB hires. This assigned Certified Renovator(s) will be responsible, in part, for compliance with the RRP Rules for that project, and in that role must perform, and document, a number of specific RRP Rule compliance-related functions.

- i. **Assigned Certified Renovator(s)** - If BCB chooses an employee(s) as the assigned Certified Renovator(s), BCB will require and ensure that employee(s) have valid and current Renovator certification from an EPA-accredited training provider before such employee(s) can serve the Certified Renovator function.
- ii. If BCB is involved in multiple concurrent projects, BCB will be required to ensure the availability of a sufficient number of Certified Renovators to maintain proper coverage and ensure compliance with the RRP Rule at all renovations.
- iii. If the only Certified Renovator on a specific project is the assigned Certified Renovator, BCB will require and ensure that the Certified Renovator trains the other workers who are performing RRP work on the lead-safe work practices required by the RRP Rule. The Certified Renovator will create a record of this training, and BCB will retain that record, as well as the other RRP records of compliance contained in the RRP Compliance Checklist, which is Appendix A to this Plan.

c. Records Retention

- i. BCB will generate and maintain the following records of compliance with the RRP Rule for each renovation it conducts:
 1. Documentation that one or more certified renovators was assigned to each project, including the name of each individual certified renovator assigned and a copy of his or her current certificate;

2. Documentation that a certified renovator provided on the job training and direction to workers who performed the renovation;
 3. Documentation that a certified renovator performed the post-renovation cleaning verification;
 4. Signed and dated acknowledgements of receipt of the Renovate Right pamphlet from both owners and/or occupants (i.e., pre-renovation education) or certificates of mailing providing proof of attempted distribution of the Renovate Right pamphlet.
 5. Documentation of results of any testing performed by an inspector, risk assessor or certified renovator;
 6. Documentation that, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, BCB provided information pertaining to compliance with the RRP to the owner of the building and, if different, an adult occupant of the dwelling, or if the renovation took place in a child-occupied facility, an adult representative of the child-occupied facility.
 7. Documentation of compliance with any other provisions of the RRP Rule not specified above,
 8. Any agreed-upon RRP Recordkeeping Forms collected in Appendix A.
- ii. BCB will maintain all records of compliance with the RRP Rule for each renovation for a minimum of 3 years after completion of the work. If the specified documents are maintained in hard copy, all such documents covering all projects with RRP Rule requirements, shall be maintained at BCB's office located at 79 Orange Ave, Suffern, NY, 10901, in a central file dedicated to RRP Rule documentation, with copies of the specified documents to be kept with the individual project files (including scope of

work, contracts, proof of payment). If hard copy records are not maintained, records of RRP compliance shall be maintained electronically in a folder dedicated to RRP Rule documentation and in an easily accessible format, and copies of the specified RRP compliance documents shall also be kept with the individual project files or folders. All electronic files containing the specified RRP compliance documents shall be backed up regularly and copies shall be maintained off-site, in the cloud or on some independent medium to prevent inadvertent loss or destruction of the data. Records shall be maintained in PDF format or another format to prevent modification of historical data. Any and all records shall be submitted to EPA upon request.

d. Managing general contractor/subcontractor roles for projects subject to the RRP Rule

- i. Whether BCB serves as the sole contractor, as a general contractor hiring subcontractors, or as a subcontractor to another general contractor, BCB will require and ensure RRP compliance (worker training, lead-safe work practices, record keeping, etc.), creation and retention of all records of compliance (and provide copies to whichever firm contracted the work to BCB), and information distribution ("Renovate Right" booklet (<https://www.epa.gov/lead/materials-and-downloads-renovators-renovation-repair-and-painting>), etc.) to the owner and/or tenants, as required/applicable.
- ii. Before BCB subcontracts renovation tasks to another firm (including individuals), BCB will seek (and retain) documentation that any such firm is EPA-certified for RRP. BCB shall also seek and retain documentation that any such subcontractor uses certified/trained workers at a renovation as required/applicable and that a specifically identified Certified Renovator has been assigned as the Certified Renovator to satisfy the assigned Certified Renovator responsibilities OR BCB will perform all such tasks itself. Upon completion of the project, BCB will ensure all requirements of the RRP

Rule are met and BCB will require the subcontractor to provide BCB with a copy of all records of compliance, which BCB will then retain in its files for a minimum of 3 years after completion of the project.

BCB Construction Corp.

RENOVATION, REPAIR AND PAINTING ("RRP") RULE COMPLIANCE PLAN

Compliance Plan Authorization and Effective Date (attested by highest corporate officer)

Contractor/Subcontractor Name and Title

Date

Signature of Authorized Officer

Date

Print Name of Authorized Officer

Title

APPENDIX A:
CHECKLIST FOR RENOVATIONS REGULATED
BY THE LEAD RENOVATION, REPAIR, AND
PAINTING (“RRP”) RULE

**CHECKLIST FOR RENOVATIONS
REGULATED BY THE RRP RULE**

THE PURPOSE OF THIS FORM IS TO DOCUMENT COMPLIANCE WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S LEAD RENOVATION, REPAIR, AND PAINTING RULE ("RRP RULE"), 40 C.F.R. § 745.80, *et seq.*, OR ANY APPLICABLE U.S. EPA-AUTHORIZED STATE OR TRIBAL PROGRAM REGULATING LEAD-BASED PAINT SAFE WORK PRACTICES.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE REQUIREMENTS IN THIS DOCUMENT AND THE RRP RULE, THE RRP RULE PREVAILS.

General Project Information:

Property Address: _____

_____ City State Zip

Contractor/subcontractor firm name and certification number (copy of the firm certificate must be on file with Respondent)

Firm Name

Certification Number

Assigned certified renovator name & certification number (copy of training certificate must be available on the work site and attached to this checklist):

Renovator Name

Certification Number

Brief description of Renovation Project (include painted surfaces disturbed and estimated size):

Did the contractor/subcontractor obtain a written determination from a certified inspector or risk assessor that lead-based paint was not present on the components affected by the renovation?

Yes and a copy of the determination is attached to this checklist. (*Form is COMPLETE. Sign Certification on last page.*)

No (*Continue to Next Section, "Lead Testing Information"*)

**CHECKLIST FOR RENOVATIONS
REGULATED BY THE RRP RULE**

LEAD TESTING INFORMATION:

Were EPA or applicable state recognized lead test kits used by certified renovator on each and every component (for example, each window to be replaced must be tested unless it is assumed to have lead-based paint) to determine whether lead was present on components affected by renovation?

Yes N/A

Identify workers and kits used and describe components tested, sampling locations and results below. Follow the lead test kit directions completely when testing components. Document paint chip sampling using the template on the following page and attach any laboratory results.

Certified Renovator Name	Certification Number

Attach additional sheets as needed.

Test Kit Manufacturer and Model	Date of Testing	Component and Location Tested	Result

Attach additional sheets as needed.

**CHECKLIST FOR RENOVATIONS
REGULATED BY THE RRP RULE**

General Information	
Name of Property Owner: _____	
Address: _____	
City: _____	State: _____ Zip code: _____ Contact #: _____
Email: _____	
Renovation Information	
Renovation Address: _____ Unit#: _____	
City: _____	State: _____ Zip code: _____
Certified Firm Name: _____	
Address: _____	
City: _____	State: _____ Zip code: _____ Contact #: _____
Email: _____	
Certified Renovator Name: _____	
Date Certified: ____ / ____ / ____	
For each sample collected, fill out all of the following information:	
Sample Identifier: _____	
Sample Collector Name: _____	
Sampling Location: _____	
Sampling site description: _____	Date of Collection: _____
Sample Dimensions (cm): _____	Calculate Sample Area (cm). _____
*NLLAP-recognized entity and location: _____	
Submission date: ____ / ____ / ____	Results: _____ Result Date: _____
Attach additional sheets as necessary.	
*National Lead Laboratory Accreditation Program	

Was lead-based paint determined to be present on the components affected by the renovation?

Yes (Continue to Next Section, "Notification, Work Practices, and Recordkeeping").

Presumed to be present on the components affected by the renovation (Continue to Next Section, "Notification, Work Practices, and Recordkeeping").

No (Form is COMPLETE, complete and sign Certification on last page.)

**CHECKLIST FOR RENOVATIONS
REGULATED BY THE RRP RULE**

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING:

(40 C.F.R. Parts §§ 745.84-745.86 or applicable state program)

Please acknowledge one of the following:

- Signed and dated acknowledgments of receipt of the Renovate Right pamphlet from, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units, owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist;

OR

- Certificates of mailing of the Renovate Right pamphlet to the following, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units; owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist.

OR

- Certificates of attempted delivery of the Renovate Right pamphlet to adult occupants of dwelling units or adult representatives of child-occupied facilities are attached to this checklist.

Comments on pamphlet delivery (*i.e.*, obstacles encountered and how they were addressed):

If the Renovation Project involved a common area of a multi-unit building, was a signed statement describing the steps taken to notify all occupants of multi-unit housing of the renovation activities, to provide the Renovate Right pamphlet to all occupants, and to inform of any changes to the renovation activities, obtained and attached?

Yes Not Applicable (N/A)

If the Renovation Project was performed in a child-occupied facility, was a signed statement describing the steps taken to notify all parents and guardians of children using child-occupied facilities of the renovation activities, to provide the Renovate Right pamphlet, and to provide a copy of the records showing compliance with the RRP Rule and any dust clearance sampling reports obtained and attached?

Yes N/A

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING; continued

If applicable, certified renovator provided training to workers on (check all that apply):

- Posting warning signs
- Maintaining containment
- Setting up plastic containment barriers
- Avoiding spread of dust to adjacent areas
- Waste handling
- Post-renovation cleaning

List Names of workers trained (attach a copy of any records documenting which elements were taught to each worker):

Certified Renovator posted signs defining work area to keep others out of renovation work area. Warning signs were posted at entrance to work area.

Yes N/A

Work area contained to prevent spread of dust and debris? (Check all that apply)

(INTERIOR)

- All objects in the work area were removed or covered.
- HVAC ducts in the work area were closed and covered.
- Windows and doors in the work area were closed and sealed.
- Floor surfaces covered by plastic extending 6 feet from work area.
- Doors in the work area were closed and sealed.
- Doors that must be used in the work area were covered to allow passage but prevent spread of dust.
- Floors in the work area were covered with taped-down plastic.

(EXTERIOR)

- Windows in and within 20 feet of the work area were closed.
- Doors in and within 20 feet of the work area were closed and sealed.
- Ground was covered by plastic extending 10 feet from work area - plastic anchored to building and weighed down by heavy objects.
- If necessary, vertical containment was installed if property line prevents 10 feet of plastic ground cover, or if necessary to prevent migration of dust and debris to adjacent property.

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING: (continued)

Please acknowledge the following if applicable:

None of the prohibited and restricted work practices was employed.

Yes *NIA*

Waste was contained on-site and while being transported off-site.

Yes *NIA*

Work site was properly cleaned after renovation (check all that apply):

Yes *NIA*

- All chips and debris were picked up, protective sheeting misted, folded dirty side inward, and taped for removal;
- Plastic sheeting misted, folded dirty side inward, and taped for removal; and
- Work area surfaces, walls, and objects were cleaned using HEPA vacuum and/or wet-cloths or mops (interiors).

Certified renovator performed post-renovation cleaning verification. Describe results, including the number of wet and dry cloths used:

OR

If dust clearance testing was performed instead of cleaning verification, the sample results were below clearance standards and a copy of the report was provided to property owners and, if not owner-occupied, adult occupants of residential dwellings or adult representatives of child-occupied facilities and posted in common areas of any multi-unit housing. A copy of the results is attached to this checklist.

Yes *N/A*

Name(s) of dust sampling technician, inspector, or risk assessor, if used (attach copies of their certification to this checklist):

If the renovation is an emergency renovation under the RRP Rule, describe in detail the nature of the emergency, the work that was done, and document the provisions of the RRP Rule that were not followed and the post-renovation cleanup.:

CONTRACTOR/SUBCONTRACTOR CERTIFICATION

I, the undersigned contractor/subcontractor, certify under penalty of law that the above information is true and complete, and do hereby certify that I have complied with all requirements of the Lead Renovation, Repair, and Painting Rule ("RRP Rule"), 40 C.F.R. § 745.80, et seq., and/or any applicable state laws or program regulating lead-based paint safe work practices, including compliance with all information distribution, notice requirements and work practice standards in performing this Renovation Project. I certify that I have provided the occupants (if any) of the Property to be Renovated, with all documentation required to be supplied under the RRP Rule and/or state program, shall retain all records required by law for at least 3 years or longer if required by state law, and shall provide copies to EPA of all the records required to be retained by the RRP Rule or applicable state program upon request. I have provided _____ with a completed copy of this Renovation Recordkeeping Checklist and all associated documentation to support its contents.

Contractor/subcontractor Name and Title

Date

Signature of Authorized Officer

Date

Print Name of Authorized Officer

Title