

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.
)	
Renewal by Andersen, LLC)	Proceeding to Assess a Civil
Middleburg Heights, Ohio)	Penalty Under Section 16(a) of the
Respondent)	Toxic Substances Control Act,
)	15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. § 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3).
2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Renewal by Andersen LLC, a Minnesota limited liability company doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations set forth in this CAFO.

8. Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of this CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under age six (6); at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of

childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. *See* 42 U.S.C. § 4851.

11. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), requires the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

14. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

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

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

17. 40 C.F.R. § 745.82(a) provides that the RRP Rule applies to all renovations performed for compensation in target housing and child-occupied facilities, with certain exceptions not relevant to this CAFO.

18. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

19. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components; the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects; and interim controls that disturb painted surfaces.

20. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has

successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

21. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

22. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87, failing to comply with any requirement of the RRP Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d).

23. Under 15 U.S.C. § 2614 and 40 C.F.R. § 745.87, failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by the RRP Rule, is a violation of TSCA sections 15 and 409, 15 U.S.C. §§ 2614, 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d).

24. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$46,989 per violation for each day of violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

General Allegations

25. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

26. At all times relevant to this CAFO, Respondent was a limited liability company with a place of business located at 17450 Engle Drive, Middleburg Heights, Ohio 44130, and was therefore a *firm* as defined by 40 C.F.R. § 745.83.

27. On January 8, 2020, an EPA inspector conducted an on-site inspection (Inspection) including interviews and a records review, at the Respondent’s place of business located at 17450 Engle Drive, Middleburg Heights, Ohio 44130, regarding Respondent’s compliance with the RRP Rule.

28. Based on records and information gathered during the Inspection, Respondent, on ten occasions in calendar years 2018 and 2019, performed or directed workers who performed window replacements for compensation at residential housing built prior to 1978, as detailed in this Table:

Line No.	Residential Property Address	Residence Type	Built Year	Renovation Date	Contracted Work
1	1613 Abbe Rd S, Elyria, OH	Single-Family	1976	10/30/2018	Window Replacement
2	1061 W. 38 th St, Lorain, OH	Single-Family	1960	10/26/2018	Window Replacement
3	631 Lakeside Ave., Lorain, OH	Single-Family	1910	12/11/2019	Window Replacement
4	311 Crestview Dr., Elyria, OH	Single-Family	1977	8/15/2018	Window Replacement
5	202 Beebe Ave., Elyria, OH	Single-Family	1950	10/17/2018	Window Replacement
6	3169 W. Erie, Loraine, OH	Single-Family	1950	9/16/2019	Window Replacement
7	909 Livermore LN., Elyria, OH	Single-Family	1962	11/12/2019	Window Replacement
8	4506 Palm Ave, Lorain, OH	Single-Family	1965	10/2/2018	Window Replacement
9	1200 Missouri Ave., Lorain, OH	Single-Family	1955	9/12/2018	Window Replacement
10	140 Devonshire Court, Elyria, OH	Single-Family	1975	3/30/2019	Window Replacement

29. The window replacements that Respondent performed at the properties listed in paragraph 28 involved modifications of the buildings’ existing structures that resulted in

disturbance of painted surfaces, and were therefore *renovations* as defined in 40 C.F.R. § 745.83 (each individually a “Renovation” and together “Renovations”).

30. Respondent either performed or directed workers to perform the Renovations, and was therefore a *renovator* as defined in 40 C.F.R. § 745.83.

31. The Renovations were each performed at residential housing built prior to 1978, and therefore each residential housing was *target housing* as defined in 40 C.F.R. § 745.103.

Counts 1 to 13 – Failure to Retain and Make Available to EPA All Records Necessary to Demonstrate Compliance with the RRP Rule

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

33. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovation.

34. 40 C.F.R. § 745.86(b)(6), in pertinent part, specifies the following records to be retained pursuant to 40 C.F.R. § 745.86(a):

- a. Documentation that a certified renovator was assigned to the project;
- b. Documentation that a certified renovator provided on-the-job training for workers used on the project;
- c. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a);
- d. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), including certification by the certified renovator assigned to the project that the certified renovator

performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

35. As part of the Inspection, the EPA inspector requested records of certain renovation projects conducted by Respondent within the last three years of the Inspection.

36. During the Inspection, Respondent failed to make available to EPA upon its request the following records:

- a. Sufficient documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) at all ten Renovations;
- b. Documentation that a certified renovator was assigned to the project, provided on-the-job training to workers used on the project, and performed or directed workers who performed the tasks described in 40 C.F.R. § 745.85(a) at the Renovation described in paragraph 28, line number 5.

37. Respondent failed to retain, and make available to EPA upon its request, the records described in paragraph 36 above for a period of three years following completion of each renovation at all ten Renovations.

38. Respondent's failure to retain, and make available to EPA upon its request, the records described in paragraph 36 above for a period of three years following completion of each Renovation constitutes thirteen violations of 40 C.F.R. § 745.86(b)(6), and Section 409 of TSCA, 15 U.S.C. § 2689.

39. Respondent's thirteen violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689, subject Respondent to the assessment of a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

Count 14 – Failure to Ensure a Certified Renovator Is Assigned to One Renovation

40. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

41. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations ensure a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

42. Respondent performed or directed to perform renovations at the Renovation described in paragraph 28, line number 5, and failed to ensure a certified renovator was assigned to that Renovation and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

43. Respondent's failure to ensure that a certified renovator was assigned and discharged the responsibilities identified in 40 C.F.R. § 745.90 at the Renovation described in paragraph 28, line number 5, constitutes one violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

44. Respondent's violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689, subjects Respondent to the assessment of a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

Civil Penalty

45. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$34,044.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do

business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

46. Within 30 days after the effective date of this CAFO, Respondent must pay the civil \$34,044.00 penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

The check must state Respondent's name and the docket number of this CAFO.

47. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
R5hearingclerk@epa.gov

Michael Todd (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
todd.michael@epa.gov

Elyse Voyen (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
voyen.elyse@epa.gov

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

49. If Respondent does not timely pay the civil penalty, EPA may refer this matter to the Attorney General to recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

51. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: voyen.elyse@epa.gov (for Complainant), and john.arnason@andersencorp.com (for Respondent). Respondent understands that this CAFO will become publicly available upon filing.

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

53. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, and local laws.

55. Respondent certifies that to the best of its knowledge it is complying with TSCA and 40 C.F.R. Part 745.

56. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine

Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA,
15 U.S.C. § 2615(a)(2)(B).

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

58. Each person signing this agreement certifies that he or she has the authority to sign
for the party whom he or she represents and to bind that party to its terms.

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

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

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

**Consent Agreement and Final Order
In the Matter of Renewal by Andersen, LLC
Docket No. TSCA-05-2024-0004**

Renewal by Andersen LLC Respondent

September 27, 2023

Date

Andrea Nordaune

Andrea Nordaune
Senior Vice President, Chief Legal Officer and
Corporate Secretary

**Consent Agreement and Final Order
In the Matter of: Renewal by Andersen, LLC
Docket No. TSCA-05-2024-0004**

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order
In the Matter of: Renewal by Andersen,
LLC Docket No. TSCA-05-2024-0004**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

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