

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

FILED

May 10, 2024

10:37 am

U.S. EPA REGION 5
HEARING CLERK

In the Matter of:)	Docket No. TSCA-05-2024-0002
)	
Benoz Homes, Inc.)	Proceeding to Assess a Civil
Plymouth, Minnesota,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
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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 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Benoz Homes Inc., a corporation with a place of business located at 605 Lanewood Lane North, Plymouth, Minnesota 55447.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided in 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. *See* 42 U.S.C. § 4851.

10. Section 1021 of 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.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities

are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

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

13. 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 ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

14. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 745.87.

15. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

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, prescribing procedures and requirements for: the accreditation of renovator training programs;

certification of individuals and firms; 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 Subpart E applies to all renovations performed for compensation in target housing and child-occupied facilities, with certain exceptions not relevant here.

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 this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (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, planing thresholds to install weather stripping), 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 *residential dwelling* to mean a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

22. 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.

23. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a).

24. 40 C.F.R. § 745.84(a)(1) requires that, no more than sixty days before beginning a renovation activity in any dwelling unit of target housing, the firm performing a renovation must provide the owner of the unit with the pamphlet, and either obtain from the owner written acknowledgement of receipt of the pamphlet, or obtain a certificate of mailing at least seven days prior to the renovation.

25. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

26. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

27. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining a copy of a certification from the certified renovator assigned to the project, and retaining records to document that: a certified renovator was assigned to the project, the certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a), the certified renovator performed on-the-job training for workers used on the renovation project, and the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

28. 40 C.F.R. § 745.87(b) requires firms performing renovations to establish and maintain records and make them available or permit access to or copying of records.

29. 40 C.F.R. § 745.89(d)(1) requires the firm performing the renovation to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

30. 40 C.F.R. § 745.89(d)(2) requires that 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.

31. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

32. 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 Sections 15 and 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

Factual Allegations and Alleged Violations

33. At all times relevant to this Complaint, Respondent was a corporation with a place of business located at 605 Lanewood Lane North, Plymouth, Minnesota, and was therefore a *firm* as defined by 40 C.F.R. § 745.83.

34. On May 15, 2021, EPA sent an information request letter (IRL) via certified mail to Respondent's place of business located at 605 Lanewood Lane North, Plymouth, Minnesota, regarding Respondent's compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

35. On July 9, 2021, Respondent replied to the IRL via email and provided records. Based on information and records provided by Respondent, on or between August 2020 and April 2021, Respondent performed or directed workers who performed window replacements and a second story addition to the property at 4129 Drew Avenue South, Minneapolis, Minnesota.

36. The property listed in paragraph 35, above, was built in 1924 and is therefore *target housing* as defined in 40 C.F.R. § 745.103.

37. The window replacements and second story addition that Respondent performed at the property listed in paragraph 35, above, were modifications of the building's existing structure that resulted in disturbance of painted surfaces and were therefore *renovations* as defined in 40 C.F.R. § 745.83.

38. The May 15, 2021 IRL issued by EPA requested all records for the renovations that Respondent had performed from January 1, 2020 to May 15, 2021. Respondent provided the contract for the renovation identified in paragraph 35, above, but did not provide any records necessary to demonstrate compliance with work practice standards in 40 C.F.R. § 745.85.

39. The building listed at the addresses in paragraph 35 is residential housing built prior to 1978, and therefore is *target housing* as defined in 40 C.F.R. § 745.103.

40. Respondent either performed or directed workers to perform the renovation described in paragraph 35, above, and is therefore a *renovator* as defined in 40 C.F.R. § 745.83.

Count 1 – Failure to Obtain Firm Certification

41. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

42. 40 C.F.R. § 745.81(a)(2)(ii) requires firms that perform, offer, or claim to perform renovations for compensation to obtain firm certification from EPA pursuant to 40 C.F.R. § 745.89.

43. Respondent was not certified as a firm under 40 C.F.R. § 745.89 during the renovation described in paragraph 35 and did not qualify for an exemption under 40 C.F.R. § 745.82(a).

44. Respondent's performance of the renovation described in paragraph 35, without certification from EPA, constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 2 – Failure to Provide Owner of Unit with EPA Approved Lead Hazard Information

45. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

46. 40 C.F.R. § 745.84(a)(1) requires that, no more than sixty days before beginning a renovation activity in any dwelling unit of target housing, the firm performing a renovation must provide the owner of the unit with the pamphlet, and either obtain from the owner written acknowledgement of receipt of the pamphlet, or obtain a certificate of mailing at least seven days prior to the renovation.

47. For the renovation described in paragraph 35, Respondent failed to provide the owner of the unit with the EPA-approved “Renovate Right” lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1).

48. Respondent’s failure to provide the owner of the unit with the EPA-approved lead hazard “Renovate Right” information pamphlet constitutes a violation of 40 C.F.R. § 745.84(a)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 3 to 7 – Failure to Retain All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E

49. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

50. 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 the completion of the renovation.

51. 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 the certified renovator provided on-the-job training for workers used on the project;
- c. Documentation that the certified renovator performed or directed workers to perform the work practice standards described in 40 C.F.R. § 745.85(a)
- d. Documentation that the certified renovator performed the post-verification cleaning verification, and;
- e. Documentation of the certified renovator's training certificate.

52. For the renovation described in paragraph 35, Respondent failed to establish and maintain the records specified in paragraph 51 to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

53. Respondent's failure to establish and maintain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of the renovation described in paragraph 35 constitutes five violations of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 8 and 9 – Failure to Discharge all Firm Responsibilities

54. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

55. 40 C.F.R. § 745.89(d)(1) requires the firm performing the renovation to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

56. 40 C.F.R. § 745.89(d)(2) requires the firm performing the renovation to ensure that 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.

57. For the renovation in paragraph 35, Respondent failed to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

58. Respondent's failure to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by certified renovators in accordance with 40 C.F.R. § 745.90 is a violation of 40 C.F.R. § 745.89(d)(1) and 15 U.S.C. § 2689.

59. For the renovation in paragraph 35, Respondent failed to assign a certified renovator and discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

60. Respondent's failure to assign a certified renovator and discharge all certified renovator responsibilities identified in 40 C.F.R. § 745.90 is a violation of 40 C.F.R. § 745.89(d)(2) and 15 U.S.C. § 2689.

Civil Penalty

61. 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 \$16,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

62. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$16,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state Respondent's name (Benoz Homes, Inc.) and the docket number of this CAFO (TSCA-05-2024-0002).

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
R5hearingclerk@epa.gov

Craig Meredith (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
meredith.craig@epa.gov
and
R5lecab@epa.gov

Ian Cecala (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
cecala.ian@epa.gov

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

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

66. 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

67. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cecala.ian@epa.gov (for Complainant), and bakhigbe@aol.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

68. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

69. 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.

70. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

71. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

72. 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).

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

74. 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.

75. Each party agrees to bear its own costs and attorneys' fees in this action.

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

77. 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 Benoz Homes, Inc.
Docket No.: TSCA-05-2024-0002**



Benjamin Akhigbe
Owner
Benoz Homes, Inc.

5/6/24

Date

**Consent Agreement and Final Order
In the Matter of Benoz Homes, Inc.
Docket No.: TSCA-05-2024-0002**

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**Consent Agreement and Final Order
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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