



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
September 19, 2012

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL**

**Receipt No. 7009 1680 0000 7668 0813**

Mr. Daniel G. Czuba  
Alliance Contracting & Design, LLC  
1719 S. Lincoln Street  
Bay City, Michigan 48708

Consent Agreement and Final Order In the Matter of  
Alliance Contracting & Design, LLC, Docket No. TSCA-05-2012-0021

Dear Mr. Czuba:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 19, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,558.00 is to be paid in the manner described in paragraphs 46 thru 48. Please be certain that the number **BD 2751267X022** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 19, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "for Leslie Blake".

for Leslie Blake

Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)  
Jeffery Cahn, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Alliance Contracting & Design, LLC )  
Bay City, Michigan )

Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2012-0021

Proceeding to Assess a Civil Penalty  
Under Section 16(a) of the Toxic Substances  
Control Act, 15 U.S.C. § 2615(a)

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5  
2012 SEP 19 PM 3:35

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 Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Alliance Contracting & Design, LLC, a Michigan limited liability company with a place of business located at 1719 S. Lincoln Street, Bay City, Michigan 48708.

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 general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 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, 42 U.S.C. § 4851 *et seq.*, 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 six; 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.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550, amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in

connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

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

13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator 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.

14. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, residential property renovations, requiring, among other things, persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation. 63 Fed. Reg. 29908 (June, 1 1998).

15. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682, EPA promulgated regulations at 40 C.F.R. Part 745 Subpart E, titled residential property renovation, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

16. Under 40 C.F.R. § 745.81(a), each firm that performs for compensation a renovation of target housing or a child occupied facility must be certified by EPA and by an EPA accredited

training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child occupied facilities, and must comply with the specified work practice and recordkeeping requirements at 40 C.F.R. §§ 745.85-86 by April 22, 2010. EPA stated that it would not take enforcement action for violations of the firm certification requirement until October 1, 2010. See Memorandum from Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, dated June 18, 2010.

17. 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.

18. 40 C.F.R. § 745.223 defines “common area” to mean a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

19. 40 C.F.R. § 745.83 defines “pamphlet” to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326.

20. 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 (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, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

21. 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.

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. § 745.84(a)(1) requires that the firm performing renovation in dwelling units on or after April 22, 2008, must provide the owner of the residential dwelling unit of target housing with the required pamphlet, and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovation.

24. 40 C.F.R. § 745.89 provides that firms that perform renovations for compensation

must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. § 745.85(a).

25. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E, for a period of three years following completion of the renovation. This includes documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

26. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, and may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

27. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **General Allegations**

28. Respondent is a limited liability company and is therefore a "firm" as defined in 40 C.F.R. § 745.83.

29. On May 11, 2011, representatives from EPA and Michigan Department of Community Health conducted an inspection at 402 Federal Street, Midland, Michigan (“the Property”).

30. On June 15, 2011, EPA sent the Respondent a certified letter requesting information concerning the Respondent’s work at the Property.

31. On June 28, 2011, EPA received a response from the Respondent to the request for information letter (“response letter”).

32. Based on information contained in the response letter, on May 2, 2011, Respondent entered into a contract to conduct work at the Property.

33. The contract referenced in paragraph 32, above, specified that Respondent, among other things, would install drywall, flooring, doors, and trim in two bathrooms, and install a window and remove flooring in the basement at the Property.

34. The Property was constructed in 1954, and is therefore “target housing” as defined in 40 C.F.R. § 745.103.

35. The work described in paragraph 33, above, were modifications of the Property’s existing structure or portions thereof that resulted in the disturbance of painted surfaces and, therefore, is a “renovation” as defined in 40 C.F.R. § 745.83.

36. Respondent either performed or directed workers to perform the renovation described in paragraph 33, above, and, therefore, is a “renovator” as defined in 40 C.F.R. § 745.83.

**Count 1**

37. Complainant incorporates paragraphs 1 through 36 of this CAFO as if set forth in this paragraph.

38. Respondent did not provide the owner of the residential dwelling unit of target housing with the required pamphlet, or obtain from the owner a written acknowledgement that the owner had received the pamphlet or obtained a certificate of mailing at least seven days prior to the renovation described in paragraph 33, above, as required by 40 C.F.R. § 745.84(a)(1).

39. Respondent's failure to provide the owner of the residential dwelling unit of target housing with the required pamphlet, and obtain from the owner a written acknowledgement that the owner had received the pamphlet or obtained a certificate of mailing at least seven days prior to the renovation described in paragraph 33, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count 2**

40. Complainant incorporates paragraphs 1 through 36 of this CAFO as if set forth in this paragraph.

41. Respondent did not apply to EPA for certification to perform renovations and therefore was not a certified firm when performing the renovation described in paragraph 33, above, as required by 40 C.F.R. § 745.89(a).

42. Respondent's failure to apply and obtain certification from EPA before performing the renovation described in paragraph 33, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count 3**

43. Complainant incorporates paragraphs 1 through 36 of this CAFO as if set forth in this paragraph.

44. Following the completion of the renovation described in paragraph 33, above, Respondent did not retain records necessary to demonstrate compliance with 40 C.F.R. Part 745,

Subpart E, as required by 40 C.F.R. § 745.86(a).

45. Respondent's failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E following completion of the renovation constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

**Civil Penalty**

46. 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 \$5,558. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, 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. Complainant also considered *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*, dated August 19, 2010. Respondent must pay a \$5,558.00 civil penalty with interest over a period of three years in twelve quarterly installments as follows:

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principle</u>	<u>Interest</u>
Payment #1	Within 90 days of effective date of CAFO	\$ 477.07	\$ 463.17	\$ 13.90
Payment #2	Within 180 days of effective date of CAFO	\$ 475.91	\$ 463.17	\$ 12.74
Payment #3	Within 270 days of effective date of CAFO	\$ 474.75	\$ 463.17	\$ 11.58
Payment #4	Within 360 days of effective date of CAFO	\$ 473.59	\$ 463.17	\$ 10.42
Payment #5	Within 450 days of effective date of CAFO	\$ 472.43	\$ 463.17	\$ 9.26

Payment #6	Within 540 days of effective date of CAFO	\$ 471.28	\$ 463.17	\$ 8.11
Payment #7	Within 630 days of effective date of CAFO	\$ 470.12	\$ 463.17	\$ 6.95
Payment #8	Within 720 days of effective date of CAFO	\$ 468.96	\$ 463.17	\$ 5.79
Payment #9	Within 810 days of effective date of CAFO	\$ 467.80	\$ 463.17	\$ 4.63
Payment #10	Within 900 days of effective date of CAFO	\$ 466.64	\$ 463.17	\$ 3.47
Payment #11	Within 990 days of effective date of CAFO	\$ 465.49	\$ 463.17	\$ 2.32
Payment #12	Within 1080 days of effective date of CAFO	\$ 464.29	\$ 463.13	\$ 1.16

47. Respondent must pay the installments 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 the case title ("In the Matter of: Alliance Contracting & Design, LLC"), the docket number of this CAFO, and the billing document number.

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

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Leslie Blake (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

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

50. If Respondent does not pay any installment payment as set forth in paragraph 47, above, then the entire unpaid balance of the civil penalty, and any amount required by paragraph 52, below, shall become due and owing, upon written notice by EPA to Respondent of the delinquency. 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.

51. 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

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the 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.*, and other applicable federal, state, and local laws.

55. Respondent certifies that it is complying with Section 402 of TSCA, 15 U.S.C. 2682, and its implementing regulations at 40 C.F.R. Part 745.

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

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

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

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

**Alliance Contracting & Design, LLC, Respondent**

8.20.12  
Date

  
Daniel G. Czuba, Owner  
Alliance Contracting & Design, LLC

**United States Environmental Protection Agency, Complainant**

September 12, 2012  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Alliance Contracting & Design, LLC  
Docket No. TSCA-05-2012-0021

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.

9-18-12  
Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5  
2012 SEP 19 PM 3:35

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Alliance Contracting & Design, LLC was filed on September 19, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 0813 to:

Mr. Daniel G. Czuba  
Alliance Contracting & Design, LLC  
1719 S. Lincoln Street  
Bay City, Michigan 48708

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Jeffery Cahn, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0021

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5  
2012 SEP 19 PM 3:35