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10
11 UNITED STATES
12 ENVIRONMENTAL PROTECTION AGENCY
13 REGION IX
14

15 In the matter of:) Docket No. TSCA-09-2020- 0027
16)
17 ProBuild Company LLC,)
18)
19 Respondent.)
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CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

29 I. CONSENT AGREEMENT

30 The United States Environmental Protection Agency, Region IX (“EPA”), and ProBuild
31 Company LLC (the “Respondent”) agree to settle this matter and consent to the entry of this
32 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
33 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

34 A. AUTHORITY AND PARTIES

35 1. This is a civil administrative penalty action brought against Respondent pursuant to
36 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
37 of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406
38 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at
39 40 C.F.R. Part 745, Subpart E.

1 2. Complainant is the Manager of the Toxics Section in the Enforcement and
2 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
3 bring this action and to sign a consent agreement settling this action.

4 3. Respondent, a Delaware limited liability company headquartered in Dallas, Texas, is a
5 residential property renovator that performs renovations in Southern California.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745,
8 Subpart E requires a person who performs for compensation a renovation of target housing and
9 child-occupied facilities to provide a lead hazard information pamphlet to the owner and
10 occupant before beginning the renovation.

11 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.
12 Part 745, Subpart E provides requirements for certification of individuals and firms engaged in
13 lead-based paint activities and work practice standards for renovation, repair, and painting
14 activities in target housing and child-occupied facilities.

15 6. “Target housing” means any housing constructed prior to 1978, except housing for the
16 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
17 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
18 U.S.C. § 2681.

19 7. “Person” means any natural or judicial person including any individual, corporation,
20 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
21 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. §
22 745.83.

23 8. “Firm” means a company, partnership, corporation, sole proprietorship or individual
24 doing business, association, or other business entity; a Federal, State, Tribal, or local government
25 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

26 9. “Renovation” means the modification of any existing structure, or portion thereof, that
27 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
28 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the

1 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
2 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
3 scraping, or other such activities that may generate paint dust); the removal of building
4 components (*e.g.*, walls, ceilings, plumbing windows); weatherization projects (*e.g.*, cutting
5 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
6 thresholds to install weatherstripping), and interim controls that disturb painted surfaces

7 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
8 745.83.

9 10. “Painted surface” means a component surface covered in whole or in part with paint
10 or other surface coatings. 40 C.F.R. § 745.83.

11 11. “Component or building component” means specific design or structural elements or
12 fixtures of a building or residential dwelling that are distinguished from each other by form,
13 function, and location. These include, but are not limited to interior components such as . . .
14 windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and
15 exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40
16 C.F.R. § 745.83.

17 12. “Renovator” means any individual who either performs or directs workers who
18 perform renovations. A certified renovator is a renovator who has successfully completed a
19 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
20 745.83.

21 13. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead
22 Hazard Information for Families, Child Care Providers and Schools,” developed under Section
23 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal
24 pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same
25 purpose. 40 C.F.R. § 745.83.

26 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
27 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
28 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to

1 exceed \$39,873 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
2 occurred on or after November 2, 2015 where penalties were assessed on or after February 6,
3 2019 but before January 13, 2020.

4 C. ALLEGED VIOLATIONS

5 15. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

6 16. At all times relevant to this CAFO, Respondent and each subcontractor that it hired
7 was a “firm,” as that term is defined at 40 C.F.R. § 745.83.

8 17. In or around 2017 and 2018, Respondent performed and hired subcontractors to
9 perform “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the
10 residential properties located at 2680 Ramona Drive in Vista, California (2018), 3852 Mt. Acadia
11 Boulevard in San Diego, California (2017), 8650 Glenhaven Street in San Diego, California
12 (2017), and 1921 Edgemont Street in San Diego, California (2017) (collectively, the
13 “Properties”).

14 18. At all times relevant to this CAFO, the Properties were “target housing,” as that term
15 is defined at 40 C.F.R. § 745.83.

16 19. Firms performing renovations must ensure that all renovations performed by the firm
17 are performed in accordance with the work practice standards in § 745.85. 40 C.F.R. §
18 745.89(d)(3).

19 20. Renovations must be performed by certified firms using certified renovators as
20 directed in § 745.89. 40 C.F.R. § 745.85(a).

21 21. Firms that perform renovations for compensation must apply to EPA for certification
22 to perform renovations. 40 C.F.R. § 745.89(a).

23 22. On or after April 22, 2010, no firm may perform a renovation without certification
24 from EPA under 40 C.F.R. § 745.89(a) in target housing unless the renovation is performed in
25 target housing that has been determined to be lead-free pursuant to 40 C.F.R. § 745.82(a). 40
26 C.F.R. § 745.81(a)(2)(ii).

27 23. At all times relevant to this CAFO, Respondent’s subcontractors did not have firm
28 certification from EPA when they performed renovations for compensation at 2680 Ramona

1 Drive in Vista, California or 1921 Edgemont Street in San Diego, California.

2 24. At all times relevant to this CAFO, 2680 Ramona Drive in Vista, California and 1921
3 Edgemont Street in San Diego, California had not been determined to be lead-free pursuant to 40
4 C.F.R. § 745.82(a) before the renovations for compensation occurred.

5 25. Respondent's failures to ensure that the renovations performed for compensation at
6 2680 Ramona Drive in Vista, California and 1921 Edgemont Street in San Diego, California
7 were performed by subcontractors that were firm certified under 40 C.F.R. § 745.89(a) as
8 required by 40 C.F.R. § 745.81(a)(2)(ii) constitute two violations of 40 C.F.R. § 745.89(d)(3) and
9 Section 409 of TSCA, 15 U.S.C. § 2689.

10 26. No more than 60 days before beginning renovation activities in any residential
11 dwelling unit of target housing, the firm performing the renovation must provide the owner of the
12 unit with the "pamphlet," as that term is defined at 40 C.F.R. § 748.83. 40 C.F.R. § 745.84(a)(1).

13 27. Respondent did not provide the owners with the "pamphlet" prior to the renovations
14 at the Properties.

15 28. Respondent's failures to provide the owners with the "pamphlet" prior to the
16 renovations at the Properties constitute four violations of 40 C.F.R. § 745.84(a)(1) and Section 409
17 of TSCA, 15 U.S.C. § 2689.

18 29. Firms performing renovations must comply with the work practice standards of §
19 745.85, including the posting of signs clearly defining the work area and warning occupants and
20 other persons not involved in renovation activities to remain outside of the work area. 40 C.F.R. §
21 745.85(a)(1).

22 30. Respondent did not post signs clearly defining the work area and warning occupants
23 and other persons not involved in renovation activities to remain outside of the work area for the
24 renovations performed at 2680 Ramona Drive in Vista, California and 1921 Edgemont Street in
25 San Diego, California.

26 31. Respondent's failures to post signs clearly defining the work area and warning
27 occupants and other persons not involved in renovation activities to remain outside of the work
28 area for the renovations performed at 2680 Ramona Drive in Vista, California and 1921 Edgemont

1 Street in San Diego, California constitute two violations of 40 C.F.R. § 745.85(a)(1) and Section
2 409 of TSCA, 15 U.S.C. § 2689.

3 32. Firms performing renovations must comply with the work practice standards of §
4 745.85, including, for exterior renovations, covering the ground with plastic sheeting or other
5 disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing
6 renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the
7 property line prevents 10 feet of such ground covering. 40 C.F.R. § 745.85(a)(2)(ii)(C).

8 33. Respondent did not cover the ground with plastic sheeting or other disposable
9 impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or
10 a sufficient distance to collect falling paint debris for the renovation performed at 2680 Ramona
11 Drive in Vista, California.

12 34. Respondent's failure to cover the ground with plastic sheeting or other disposable
13 impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or
14 a sufficient distance to collect falling paint debris for the renovation performed at 2680 Ramona
15 Drive in Vista, California constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) and Section
16 409 of TSCA, 15 U.S.C. § 2689.

17 35. Firms performing renovations must retain documentation of compliance with the
18 requirements of § 745.85, including documentation that: a certified renovator was assigned to
19 the project; a certified renovator provided on-the-job training for workers used on the project; a
20 certified renovator performed or directed workers who performed all of the work practice tasks
21 described in § 745.85(a); and a certified renovator performed the post-renovation cleaning
22 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

23 36. Respondent did not retain documentation for the renovations performed at the
24 Properties that: a certified renovator was assigned to the project; a certified renovator provided
25 on-the-job training for workers used on the project; a certified renovator performed or directed
26 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
27 renovator performed the post-renovation cleaning verification described in § 745.85(b).

28 37. Respondent's failures to retain documentation for the renovations performed at the

1 Properties that: a certified renovator was assigned to the project; a certified renovator provided
2 on-the-job training for workers used on the project; a certified renovator performed or directed
3 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
4 renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute
5 16 violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

6 38. Firms performing renovations must ensure that a certified renovator is assigned to
7 each renovation performed by the firm and discharges all of the certified renovator
8 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

9 39. Respondent did not ensure that a certified renovator discharged all of the certified
10 renovator responsibilities identified in § 745.90 for the renovations performed at the Properties.

11 40. Respondent's failures to ensure that a certified renovator discharged all of the
12 certified renovator responsibilities identified in § 745.90 for the renovations performed at the
13 Properties constitute four violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15
14 U.S.C. § 2689.

15 D. RESPONDENT'S ADMISSIONS

16 41. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
17 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
18 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
19 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
20 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
21 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
22 proposed Final Order contained in this CAFO.

23 E. CIVIL ADMINISTRATIVE PENALTY

24 42. In full and final settlement of the violations specifically alleged in Section I.C of this
25 CAFO, Respondent shall pay a civil administrative penalty of FORTY-EIGHT THOUSAND
26 AND SIXTY DOLLARS (\$48,060). Respondent shall pay this civil penalty within thirty (30)
27 days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or
28 cashier's check, including the name and docket number of this case, for the amount, payable to

1 “Treasurer, United States of America,” (or be paid by one of the other methods listed below) and
2 sent as follows:

3
4 Regular Mail:

5 U.S. Environmental Protection Agency
6 Fines and Penalties
7 Cincinnati Finance Center
8 PO Box 979077
9 St. Louis, MO 63197-9000

10 Wire Transfers:

11 Wire transfers must be sent directly to the Federal Reserve Bank in New
12 York City with the following information:
13 Federal Reserve Bank of New York
14 ABA = 021030004
15 Account = 68010727
16 SWIFT address = FRNYUS33
17 33 Liberty Street
18 New York, NY 10045
19 Beneficiary = U.S. Environmental Protection Agency

20 Certified or Overnight Mail:

21 U.S. Bank
22 1005 Convention Plaza
23 Mail Station SL-MO-C2GL
24 ATTN Box 979077
25 St. Louis, MO 63101

26 ACH (also known as Remittance Express or REX):

27 Automated Clearinghouse (ACH) payments to EPA can be made through
28 the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

1 On Line Payment:

2 This payment option can be accessed from the information below:

3 www.pay.gov
4 Enter "SFO 1.1" in the search field
5 Open form and complete required fields

6 If clarification regarding a particular method of payment remittance is
7 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

8 A copy of each check, or notification that the payment has been made by one of the other
9 methods listed above, including proof of the date payment was made, shall be sent with a
10 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
11 following addresses:

12 Regional Hearing Clerk
13 Office of Regional Counsel (ORC-1)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Max Weintraub
18 Toxics Section
19 Enforcement and Compliance Assurance Division (ENF-4-1)
20 U.S. Environmental Protection Agency, Region IX
21 75 Hawthorne Street
22 San Francisco, CA 94105

23 43. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
24 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
25 use such payment as a tax deduction.

26 44. If Respondent fails to pay the assessed civil administrative penalty of FORTY-
27 EIGHT THOUSAND AND SIXTY DOLLARS (\$48,060), as identified in Paragraph 42, by the
28 deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of
FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty. Stipulated
penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties
are paid and shall become due and payable upon EPA's written request. Failure to pay the civil
administrative penalty specified in Paragraph 42 by the deadline specified in that Paragraph may
also lead to any or all of the following actions:

1 (1) EPA may refer the debt to a credit reporting agency, a collection
2 agency, or to the Department of Justice for filing of a collection action in the appropriate United
3 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
4 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
5 collection proceeding.

6 (2) The U.S. Government may collect the debt by administrative offset
7 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
8 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
9 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
10 C.F.R. §§ 13(C) and 13(H).

11 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
12 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
13 business with EPA or engaging in programs EPA sponsors or funds.

14 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
15 Government may assess interest, administrative handling charges, and nonpayment penalties
16 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
17 civil administrative penalty specified in Paragraph 42 by the deadline specified in that Paragraph.

18 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
19 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
20 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
21 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
22 (30) days of the effective date of this CAFO.

23 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
24 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
25 based on either actual or average cost incurred (including both direct and indirect costs), for
26 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

1 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
2 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
3 may be assessed on all debts more than ninety (90) days delinquent.

4 F. CERTIFICATION OF COMPLIANCE

5 45. In executing this CAFO, Respondent certifies that it is now fully in compliance with
6 the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

7 G. RETENTION OF RIGHTS

8 46. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
9 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
10 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
11 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
12 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
13 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
14 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
15 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

16 47. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
17 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
18 and permits.

19 H. ATTORNEYS' FEES AND COSTS

20 48. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
21 this proceeding.

22 I. EFFECTIVE DATE

23 49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
24 effective on the date that the Final Order contained in this CAFO, having been approved and
25 issued by either the Regional Judicial Officer or Regional Administrator, is filed.


1 J. BINDING EFFECT

2 50. The undersigned representative of Complainant and the undersigned representative of
3 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
4 of this CAFO and to bind the party he or she represents to this CAFO.

5 51. The provisions of this CAFO shall apply to and be binding upon Respondent and its
6 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
7 and assigns.

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16 FOR RESPONDENT PROBUILD COMPANY LLC:

17
18 3/28/2020
DATE

19 
DERYL WARD
Vice President
ProBuild Company LLC

20
21
22 FOR COMPLAINANT EPA:

23
24 4/7/20
DATE

25 MATTHEW SALAZAR
Digitally signed by MATTHEW SALAZAR
Date: 2020.04.07 11:33:15 -07'00'

26 MATT SALAZAR, P.E.
27 Manager, Toxics Section
28 Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and ProBuild Company LLC having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2020-0027) be

4 entered, and Respondent shall pay a civil administrative penalty in the amount of FORTY-

5 EIGHT THOUSAND AND SIXTY DOLLARS (\$48,060), and comply with the terms and

6 conditions set forth in the Consent Agreement.

7
8
9 _____
10 DATE

11 Steven Jawgiel
12 Regional Judicial Officer
13 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

By this document I do hereby certify that the CONSENT AGREEMENT AND FINAL ORDER in the matter of ProBuild Company LLC (TSCA-09-2020-0027), has been filed with the Regional Hearing Clerk, and a copy was served on both Respondent and Counsel for EPA, as indicated below:

RESPONDENT

Deryl Ward,
Vice-President & Deputy General Counsel
Builders First Source, Inc.
Deryl.Ward@bldr.com

COUNSEL FOR EPA

Edgar P. Coral,
Assistant Regional Counsel
U.S. EPA - Region 9
Coral.Edgar@epa.gov

Date: April 17, 2020

Steven Armsey

Steven Armsey
Regional Hearing Clerk
EPA, Region 9