

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<p><b>In the Matter of:</b></p> <p><b>NOC Operations, Inc.</b> <b>Elyria, Ohio</b></p> <p style="text-align: center;"><b>Respondent.</b></p> <hr style="border: 1px solid black;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. TSCA-05-2023-0010</b></p> <p><b>Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)</b></p>
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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 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. Part 22.

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 NOC Operations, Inc., doing business as ServPro of the North Coast, ServPro of Southern Lorain County, and ServPro of Northwest Cuyahoga County, with a place of business located at 6850 Lake Avenue, Elyria, Ohio 44035.

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 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 the 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, 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, 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. 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.

17. 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.

18. 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).

19. 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 identified in 40 C.F.R. §§ 745.82(a)(1) - (3) not relevant here.

20. Pursuant to 40 C.F.R. § 745.82(b), the information distribution requirements in 40 C.F.R. § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in

response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in 40 C.F.R. §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2), the cleaning verification requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6) and (b)(7).

21. 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.

22. 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; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

23. 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.

24. 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.

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. Under 40 C.F.R. § 745.86(b)(6), records that must be retained pursuant to § 745.86(a) shall include records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including, among other things, documentation that a certified renovator was assigned to the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b), and that a copy of the certified renovator's training certificate is retained and available. 40 C.F.R. § 745.86(b)(6) further provides that if the renovation firm was unable to comply with all of the requirements of the RRP Rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the RRP Rule that were not followed .

28. Under 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges certified renovator responsibilities identified in § 745.90. Under 40 C.F.R. § 745.90(b)(1), a certified renovator must perform all of the tasks described in 40 C.F.R. § 745.85. Under 40 C.F.R. § 745.85(b), the firm must ensure that the certified renovator complies with all of the

post-renovation cleaning verification standards and tasks described in 40 C.F.R. § 745.85(b). Post-renovation cleaning verification under 40 C.F.R. § 745.85(b) includes but is not limited to: visual inspection by the certified renovator to determine whether dust, debris or residue is still present within interiors; verification by the certified renovator that each interior windowsill in the work area has been adequately cleaned; wiping by the certified renovator of uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth; and a visual inspection of exteriors by the certified renovator to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground.

29. 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).

30. 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 \$40,576 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 December 23, 2020.

### **General Allegations**

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.

32. At all times relevant to this CAFO, Respondent was a *firm* as defined by 40 C.F.R. § 745.83.

33. On June 16, 2021, July 29, 2021, and August 18, 2021, an inspector employed by EPA conducted an on-site inspection (Inspection), including interviews and a records review, at

the Respondent’s place of business located at 6850 Lake Avenue, Elyria, Ohio, regarding Respondent’s compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

34. Based on records and information gathered during the Inspection referenced in paragraph 33, Respondent, on five occasions in calendar years 2020 and 2021, performed or directed workers who performed emergency renovations that resulted in disturbances of painted surfaces in the following residential housing built prior to 1978, as detailed in this Table:

Line No.	Residential Property Address	Residence Type	Built Year	Contract Date	Contracted Work
1	3202 Grant St., Lorain, OH 44052	Single-Family	1954	1/8/2020	Emergency Renovation Restoration/Remodel
2	814 Case Ave., Elyria, OH 44035	Single-Family	1970	2/19/2020	Emergency Renovation Restoration/Remodel
3	321 15th St., Elyria, OH 44035	Single-Family	1900	2/10/2021	Emergency Renovation Restoration/Remodel
4	848 Jamestown Ave., Elyria, OH 44035	Single-Family	1962	4/8/2021	Emergency Renovation Restoration/Remodel
5	1830 Revere Place, Lorain, OH 44053	Single-Family	1971	5/19/2020	Emergency Renovation Restoration/Remodel

35. The five contracted emergency renovations referenced in paragraph 34 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 at all times relevant to this CAFO.

36. Respondent either performed or directed workers to perform the renovations described in paragraph 34, above, and was therefore a *renovator* as defined in 40 C.F.R. § 745.83 at all times relevant to this CAFO.

37. The five emergency renovations referenced in paragraph 34 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 at all times relevant to this CAFO.



**Counts 1 to 5 – Alleged Failure to Retain All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E at Five Emergency Renovations**

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

39. Under 40 C.F.R. § 745.82(b), emergency renovations are not exempt from the recordkeeping requirements of 40 C.F.R. § 745.86(b)(6).

40. 40 C.F.R. § 745.86(b)(6) requires a firm to retain, among other things, documentation that a certified renovator was assigned to the project, documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), documentation of the certified renovator's training certificate, documentation that a certified renovator performed or directed workers who performed the cleaning tasks described in § 745.85(a), and documentation by the renovation firm of the nature of the emergency at any emergency renovation and the provisions of the RRP Rule that were not followed during the emergency renovation.

41. For purposes of performing a records review as part of the Inspection, the EPA inspector requested records of emergency renovation projects conducted by Respondent within the last three years of the Inspection.

42. Based on the records supplied by Respondent, Respondent performed contracted emergency renovations at the five locations of single-family residential housing described in paragraph 34.

43. During the Inspection, Respondent did not produce the following records for any of the five locations of single-family residential housing described in paragraph 34:

- a. Documentation that a certified renovator was assigned to the five emergency renovations,

- b. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) at the five emergency renovations,
- c. Documentation of the certified renovator's training certificate for the five emergency renovations,
- d. Documentation that a certified renovator performed or directed workers who performed the cleaning tasks described in § 745.85(a) at the five emergency renovations, and
- e. Documentation of the nature of the emergency and the provisions of the RRP Rule that were not followed at the five emergency renovations.

44. Respondent failed to retain records identified in 40 C.F.R. § 745.86(b)(6) for a period of three years following completion of each emergency renovation at all five locations of single-family residential housing described in paragraph 34.

45. Respondent's failure to retain records identified in 40 C.F.R. § 745.86(b)(6) for a period of three years following completion of each emergency renovation at all five locations of single-family residential housing described in paragraph 34, constitutes five alleged violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

46. Respondent's alleged 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.

**Counts 6 to 10 – Alleged Failure to Assign Certified Renovator to Renovation Projects and Ensure Post-Renovation Cleaning Verification at Five Emergency Renovations**

47. Complainant incorporates paragraphs 1 through 37 of this Complaint as if set forth in this paragraph.

48. 40 C.F.R. § 745.89(d)(2) requires the firm performing the renovation to ensure a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90, including § 745.90(b)(1), which

requires a certified renovator to perform all post-renovation cleaning verification tasks described in 40 C.F.R. § 745.85(b).

49. Under 40 C.F.R. § 745.82(b), emergency renovations are not exempt from the post-renovation cleaning verification requirements of 40 C.F.R. § 745.85(b), which must be performed by certified renovators.

50. Respondent performed or directed to perform emergency renovations at each of the five locations of single-family residential housing described in paragraph 34, and did not assign a certified renovator to any of the five emergency renovations.

51. Respondent performed or directed to perform emergency renovations at each of the five locations of single-family residential housing described in paragraph 34, and did not ensure that a certified renovator discharged the post-renovation cleaning verification responsibilities identified in 40 C.F.R. § 745.85(b) at any of the five emergency renovations.

52. Respondent failed to ensure that a certified renovator was assigned and discharged post-renovation cleaning verification responsibilities at each of the five locations of single-family residential housing described in paragraph 34, as required by 40 C.F.R. § 745.89(d)(2).

53. Respondent's failure to ensure that a certified renovator was assigned and discharged post-renovation cleaning verification responsibilities at each of the five locations of single-family residential housing described in paragraph 34, constitutes five alleged violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

54. Respondent's alleged violations of 40 C.F.R. § 745.89(d)(2) 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.

### **Civil Penalty**

55. 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 \$70,578. 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.

56. Within 30 days after the effective date of this CAFO, Respondent must pay the civil \$70,578 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 and the docket number of this CAFO.

57. 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](mailto:R5hearingclerk@epa.gov)

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

Kevin Chow (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
[chow.kevin@epa.gov](mailto:chow.kevin@epa.gov)

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

59. If Respondent does not timely pay 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). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

60. 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**

61. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [chow.kevin@epa.gov](mailto:chow.kevin@epa.gov) (for Complainant), and [dbinau@hmbc.com](mailto:dbinau@hmbc.com) (for Respondent).

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

63. 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.

64. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, 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.

65. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

66. 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).

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

68. 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.

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

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

71. 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 NOC Operations,  
Inc. Docket No. TSCA-05-2023-0010**

**NOC Operations, Inc. Respondent**

9/5/2023  
Date

  
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Nate Hinders  
Treasurer  
NOC Operations, Inc.

**Consent Agreement and Final Order  
In the Matter of: NOC Operations, Inc.  
Docket No. TSCA-05-2023-0010**

**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division



**Consent Agreement and Final Order  
In the Matter of: NOC Operations, Inc.  
Docket No. TSCA-05-2023-0010**

**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.

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