

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
Howard Gross)	Docket No. TSCA-01-2019-0050
466 Central Avenue, Suite 9)	
Dover, New Hampshire 03820)	
)	CONSENT AGREEMENT
)	AND
Respondent)	FINAL ORDER
)	
)	

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), and Respondent Howard Gross (“Respondent”) have agreed that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter.

STATUTORY AND REGULATORY AUTHORITY

1. EPA issued a Complaint against Respondent pursuant to Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (“Complaint”).
2. The Complaint alleges that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Disclosure of Known

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Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”).

3. The provisions of this CAFO shall apply to and be binding on the Respondent, and his successors and assigns.
4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this CAFO.
5. Respondent hereby waives his rights to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives his rights to appeal the Final Order.
6. Respondent hereby certifies that he is presently in, and shall remain in compliance with the Act and the Disclosure Rule.
7. Within 180 days of the effective date of this CAFO, Respondent shall submit to EPA copies of all leases, and associated documents pertaining to lead-based paint, executed since the effective date of this CAFO for Respondent’s property that is the subject of the Complaint. If Respondent transfers such property during the 180-day period after the effective date of this CAFO, Respondent shall submit a copy of the sales contract and associated documents pertaining to lead-based paint. Documents referred to in this paragraph shall be sent to:

Jordan Alves
Environmental Protection Scientist
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (05-4)
Boston, MA 02109-3912

Penalty

8. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and taking into account the nature of the violations and relevant statutory penalty criteria, EPA has determined that it is fair and proper to assess a civil penalty in the amount of twenty-six thousand dollars (\$26,000) for the violations alleged in this matter.
9. Without admitting or denying the factual allegations contained in the Complaint, Respondent consents to the issuance of this CAFO and consents to the payment of a civil penalty of \$26,000, which shall be due within 30 calendar days of the effective date of this CAFO.
10. Respondent agrees to pay the civil penalty of \$26,000 in the manner described below:
 - a. Payment shall be in a single payment in the amount of \$26,000 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date a payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case (*In the Matter of Howard Gross; TSCA-01-2019-0050*), be in the amounts stated above, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Include the phrase "Government Lockbox 979077" on the shipping label.

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (04-6)
Boston, MA 02109-3912

and

Tim Conway

Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (04-3)
Boston, MA 02109-3912

11. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty, plus all accrued interest as calculated pursuant to Paragraph 12 below, due to the United States upon such failure. Interest shall continue to accrue on all unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment. All payments to the United States under this paragraph shall be made in accordance with Paragraph 10.
12. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

13. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.
14. Respondent shall maintain legible copies of documentation of any underlying documents or reports submitted to EPA pursuant to this CAFO for five years and shall provide copies of such documents to EPA not more than seven days after a request for such information.
15. Respondent shall submit all notices, submissions, and reports required by this CAFO to the following individuals, by first class mail or any other commercial delivery service, at the following addresses:

Jordan Alves
Environmental Protection Specialist
U.S. Environmental Protection Agency, Region 1
Post Office Square, Suite 100 (05-4)
Boston, MA 02109-3912

and

Tim Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (04-3)
Boston, MA 02109-3912

Except where the terms of this CAFO expressly indicate otherwise, the foregoing requirements for submitting notices, submissions, and reports required by this CAFO may be

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satisfied by transmitting an electronic copy thereof to Mr. Alves and Mr. Conway, provided that telephone notice be given to both individuals at the time of transmission, at:

Alves.jordan@epa.gov
phone: 617-918-1739

and

conway.tim@epa.gov
phone: 617-918-1705

16. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in the Complaint or this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law.
17. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
18. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
19. Except as specifically settled herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or

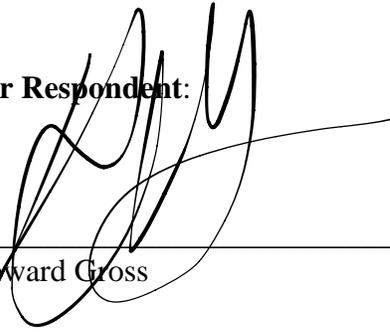
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sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

20. The Parties shall bear their own costs and fees in this action, including attorneys' fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

21. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent:



Howard Gross

9/10/20

Date

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For Complainant U.S. EPA:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region I

Date

FINAL ORDER

Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), authorizes EPA to compromise with or without conditions the maximum civil penalties which may be imposed under that Section. EPA has made such a compromise by applying the penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), to the facts and circumstances of this case, including the circumstances of the violations and the culpability of the violator. Pursuant to those provisions, EPA has modified the maximum civil penalties and imposed the conditions described in Paragraph 7 of this Consent Agreement.

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Howard Gross, is ordered to comply with the terms of the above Consent Agreement.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

_____)	
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)	Docket No. TSCA-01-2019-0050
Howard Gross)	
)	
Respondent)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy, Electronically Delivered	Wanda Santiago Regional Hearing Clerk (Mail Code 04-6) U.S. Environmental Protection Agency, Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912 R1_Hearing Clerk_Filings@epa.gov
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Copy, Electronically Delivered	George Olson, Esq. Olson Law Office 50 Congress Street, Suite 415 Boston, Massachusetts 02109 golson@gedolsonlaw.com
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Dated: _____	_____
	Tim Conway Senior Enforcement Counsel U.S. Environment Protection Agency, Region 1 5 Post Office Square, Suite 100 Mail Code: 04-3 Boston, MA 02109-3912 Conway.tim@epa.gov