

5/31/22

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

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In the Matter of: )  
)  
)  
American Wire, LLC )  
670 N. Commercial Street )  
Suite 303 )  
Manchester, NH 03101 )  
)  
)  
Respondents. )  
)  
*Proceeding under Section 16(a) of the* )  
*Toxic Substances Control Act,* )  
*42 U.S.C. § 2615(a).* )  
\_\_\_\_\_ )

EPA Docket No.

TSCA-01-2022-0004

Received by  
EPA Region 1  
Hearing Clerk

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the U.S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), alleges that Respondent, American Wire, LLC (“American Wire”), violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and the Rhode Island Lead Poisoning Prevention Regulations set forth at 216-RICR-15-50-3 *et seq.* (“RI RRP Rule”).

This Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), set forth at 40 C.F.R. Part 22. Complainant and Respondent (collectively, the

“Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

## I. STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (“Act”) in response to findings that low-level lead poisoning was widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be considered in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

2. In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA (*Lead Hazard Information Pamphlet – Renovation of Target Housing*), 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule”).

3. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.” *See* 40 C.F.R. §§ 745.100, 745.103,

745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(6).

4. Pursuant to Section 404 of TSCA, 15 U.S.C. § 2684, EPA may authorize a state to administer its own RRP Rule program in lieu of the federal program when the Administrator deems the state program to be at least as protective of human health and the environment as the federal program.

5. On April 20, 2010, EPA gave authorization to Rhode Island to implement its RRP Rule. The RI RRP Rule was promulgated under R.I.G.L. § 23-24.6-1 *et seq.* The RI RRP Rule is set forth at 216-RICR-15-50-3 *et seq.* Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program. *See also* 40 C.F.R. § 745.324(f)(3).

6. The RI RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

7. Pursuant to 216-RICR-15-50.3.3(A)175., the housing stock addressed by the RI RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, or any “0-bedroom dwelling” in which no child under 6 years of age resides.

8. Pursuant to 216-RICR-15-50.3.2.3(A)7., the requirements of the RI RRP Rule apply to all renovations performed at a regulated facility or for compensation in target housing.

9. Pursuant to 216-RICR-15-50.3.3(A)160., the term “residential dwelling” means a building containing one or more residential dwelling units.

10. Pursuant to 216-RICR-15-50.3.3(A)101., the term “lead renovation firm” means any person or organization engaged in renovation, repair, and painting or lead hazard control as a business and licensed pursuant to the RI RRP Rule.

11. Pursuant to 216-RICR-15-50.3.3(A)153., the term “renovation” means the modification of any existing structure, or portion thereof that results in the disturbance of lead-painted surfaces, unless that activity is performed as part of a lead hazard control or lead hazard reduction project. 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 activities such as sanding, scraping, or other such activities which 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, planing thresholds to install weather-stripping); and interim controls that disturb lead-painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or childcare facilities is a renovation under the RI RRP Rule. The term renovation does not include minor repair and maintenance activities.

12. Pursuant to 216-RICR-15-50.3.3(A)102., “lead renovator” means an individual who successfully completed a certified Lead Renovator training course and obtained a valid training certificate, pursuant to the RI RRP Rule, to perform renovation, repair, and painting and lead hazard control work.

13. Under the RI RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this CAFO, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain a state license for the firm prior to performing renovations;
- ii. Assign a certified lead renovator, and ensure that a certified lead renovator performs the renovation or directs a properly trained worker to perform the renovation;
- iii. Provide the RI version of the EPA pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iv. Perform renovations in compliance with applicable work practice standards for any lead renovation, repair, and painting activities conducted; and,
- v. Retain all records necessary to demonstrate compliance with the same.

*See* 216-RICR-15-50.3.17.4.-18.

14. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

15. TSCA Section 16(a) authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA. Under the Debt Collection Improvements Act, 40 C.F.R. Part 19 and the Federal Civil Penalties Inflation Adjustment Act Improvement Act, 28

U.S.C. § 2461, each violation that occurred after November 2, 2015, and for which a penalty is assessed on or after December 23, 2020, is subject to a penalty of up to \$41,056 per day per violation. (See 85 Fed. Reg. 247, December 23, 2020).

## **II. GENERAL ALLEGATIONS**

16. American Wire is a limited liability corporation organized under the laws of Rhode Island. American Wire is the owner and developer of the property located at 413 Central Avenue in Pawtucket, Rhode Island (the “Property”). American Wire’s principal place of business is located at 670 N. Commercial Street, Suite 303, Manchester, New Hampshire.

17. At all times relevant to this CAFO, American Wire utilized its employees to oversee renovation activities at 413 Central Avenue, Pawtucket, Rhode Island (“413 Central Avenue”).

18. On March 10, 2020, EPA representatives along with Rhode Island Department of Health (“RI DOH”) officials conducted an inspection (“Inspection”) at the Property, where renovations were being performed, to determine American Wire’s compliance with the RI RRP Rule (“Inspection”).

19. At the time the Inspection, American Wire was in the process of converting buildings at the Property from commercial space to residential units.

20. The Property was built prior to 1978, and therefore, it is “target housing,” as defined in 216-RICR-15-50.3.3(A)175. Furthermore, the Property does not satisfy the requirements for an exemption under the provisions of TSCA (including 15 U.S.C. § 2681(17)) or the RI RRP Rule.

21. At all times relevant to the RI RRP Rule violations alleged in this CAFO, American Wire was a “lead renovation firm,” as defined in 216-RICR-50-15-3.3(A)101.

22. At all times relevant to the RI RRP Rule violations alleged in this CAFO, the Property was being converted to a “residential dwelling,” as defined in 216-RICR-50-15-3.3(A)160.

23. At all times relevant to the RI RRP Rule violations alleged in this CAFO, American Wire hired subcontractors to perform renovation activities at the Property that constituted “renovations” within the meaning of 216-RICR-50-15-3.3(A)153.

24. At the time of the Inspection, two separate renovations were being performed at the Property by subcontractors of American Wire. The first renovation, performed by P.M. Masonry, Inc., consisted of the partial demolition of two, painted, brick walls between Buildings 6 and 7. The second renovation, performed by M. Weisman Roofing Company, consisted of cutting into painted timbers, some of which previously had been sandblasted, making up a roof deck and the installation of eight skylights in Buildings 7 and 8.

25. The renovation activities performed by American Wire’s subcontractors at the Property constituted renovations for compensation within the meaning of TSCA Section 406(b) and the RI RRP Rule.

### **III. VIOLATIONS**

26. EPA has identified the following violations of the RI RRP Rule based on documents and other information obtained from Respondent during or as a result of the Inspection and EPA’s investigation of the facts and circumstances underlying the violations.

27. Each of the violations alleged below is a prohibited act under TSCA Section 409, 15 U.S.C. § 2689, and each is a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

**COUNT ONE**

*Failure to Assign a Certified Renovator*

28. Paragraphs 1 through 27, above, are incorporated by reference as if fully set forth herein.

29. Pursuant to 216-RICR-50-15-3.17.3(A)1.e., the Renovation Firm shall ensure that a certified lead renovator is designated as the person responsible for oversight of each RRP project and discharges all of the Lead Renovator responsibilities identified in § 3.17.3(B).

30. At the time of the Inspection, none of the individuals working on the two renovations described in paragraph 24 above, were certified lead renovators, in violation of 216-RICR-50-15-3.17.3(A)1.e.

31. The two violations alleged in this count are prohibited acts under TSCA Section 409, and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

**Count Two**

*Failure to Post Protective Signs*

32. Paragraphs 1 through 31, above, are incorporated by reference as if fully set forth herein.

33. Pursuant to 216-RICR-50-15-3.17.3(A)1.i., the renovation firm shall ensure that all RRP work is performed pursuant to §§ 3.16 and 3.17. Pursuant to 216-RICR-50-15-

3.16.9(A)1-5, warning signs must be posted at all entrances to the work areas before beginning the RRP project and must be illuminated and cleaned as necessary so that the text is readily visible. The signs must contain at least the following text which is required by 29 CFR 1926.62(m):

Danger  
Lead Work Area  
May Damage Fertility or the Unborn Child  
Causes Damage to the Central Nervous System  
Do Not Eat, Drink, or Smoke in this Area

The signs must contain a 24-hour emergency contact telephone number. To the extent practicable, these signs must be in the primary language of the occupants, be readily visible, and securely affixed in such a way that prevents their loss or unintentional removal. The signs must remain in place and readable until cleaning verification or acceptable clearance, as applicable, is achieved. Pursuant to 216-RICR-50-15-3.17.12(B), warning signs, pursuant to § 13.16.9, must be posted at all entrances to the work area(s) before beginning RRP work.

34. Respondent did not ensure that protective signs were posted at all entrances to the work area for the renovation performed by P.M. Masonry, Inc. described in paragraph 24 above, in violation of 216-RICR-50-15-3.17.3(A)1.i., 216-RICR-50-15-3.16.9(A)1-5 and 216-RICR-50-15-3.17.12(B).

35. The violation alleged in this count is a prohibited act under TSCA section 409, and a violation for which penalties may be assessed pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

### **Count Three**

#### *Failure to Maintain Records Demonstrating Compliance*

36. Paragraphs 1 through 35, above, are incorporated by reference as if fully set forth herein.

37. Pursuant to 216-RICR-50-15-3.17.3(A)1.1., the Lead Renovation Firm shall ensure that the recordkeeping requirements of § 3.17.18 are met. Pursuant to 216-RICR-50-15-3.17.18(A) and (B), firms performing renovations must establish and maintain records, and if requested, make available all records necessary to demonstrate compliance with the RI RRP Rule for three years.

38. Neither Respondent nor Respondent's subcontractors retained all records necessary to demonstrate compliance with the RI RRP Rule for the renovations performed at 413 Central Avenue described in paragraph 24 above, in violation of 216-RICR-50-15-3.17.3(A)1.1. and 216-RICR-50-15-3.17.18(A) and (B).

39. The violation alleged in this Count is a prohibited act under TSCA Section 409, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

### **Count Four**

#### *Failure to Obtain a Lead Renovation Firm License*

40. Paragraphs 1 through 39 above, are incorporated by reference as if fully set forth herein.

41. Pursuant to 216-RICR-50-15-11.5.A., organizations, including sole

proprietorships and subcontractors, and self-employed individuals shall be licensed as a Lead Renovation Firm in order to offer or perform renovation, repair, and painting or lead hazard control work in Rhode Island.

42. At the time of the Inspection when renovations were being performed at the Property, American Wire was not licensed as a Lead Renovation Firm, in violation of 216-RICR-50-15-11.5.A.

43. The violation alleged in this Count is a prohibited act under TSCA Section 409, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

#### **IV. TERMS OF SETTLEMENT**

44. This CAFO shall apply to and be binding upon Respondent, its successors and assigns.

45. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue. Without admitting or denying the factual allegations contained in this CAFO, Respondent consents to the terms of this CAFO.

46. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the CAFO and waives its right to appeal the Final Order accompanying this Consent Agreement.

47. Respondent certifies that it is operating and agrees that that it will continue to

operate its business in compliance with Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and RI RRP Rule.

48. As of the effective date of this CAFO, Respondent shall ensure that a certified lead renovator is assigned to each renovation performed by Respondent or Respondent's subcontractors, in compliance with 216-RICR-50-15-3.17.3(A)1.e.

49. As of the effective date of this CAFO, Respondent shall ensure that protective signs are posted, in compliance with 216-RICR-50-15-3.17.3(A)1.i., 216-RICR-50-15-3.16.9.A.1-5 and 216-RICR-50-15-3.17.12.B.

50. As of the effective date of this CAFO, Respondent shall retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RI RRP Rule for a period of 3 years following completion of any renovation subject to the RI RRP Rule, in compliance with 216-RICR-50-15-3.17.3(A)1.1 and 216-RICR-50-15-3.17.18(A) and (B).

51. Within ninety (90) days of the effective date of this CAFO, Respondent shall obtain and thereafter shall maintain its Lead Renovator Firm License, in compliance with 216-RICR-50-15-11.5.A. Respondent shall email a copy of its Lead Renovator Firm License to EPA within ninety-five (95) days of the effective date of this CAFO. The email shall be sent to Jordan Alves at [alves.jordan@epa.gov](mailto:alves.jordan@epa.gov) and Andrea Simpson at [simpson.andrea@epa.gov](mailto:simpson.andrea@epa.gov).

52. Pursuant to Section 16 of TSCA, 15 U.S.C § 2615, based upon the nature of the alleged violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-five thousand dollars (\$25,000).

53. Respondent consents to the issuance of this CAFO and to the payment of the civil

penalty cited in the foregoing paragraph.

54. Respondent shall pay the penalty of twenty-five thousand dollars (\$25,000) within 30 days of the effective date of this CAFO in the following manner: The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of American Wire, LLC*; Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (TSCA-01-2022-0004), 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. Environmental Protection Agency  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

**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 be sent by email to:

Wanda Santiago, Regional Hearing Clerk  
r1\_hearing\_clerk\_filings@epa.gov

and

Andrea Simpson, Senior Enforcement Counsel  
simpson.andrea@epa.gov

55. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent’s violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent’s violation of any applicable provision of law.

56. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

57. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the

Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of paragraphs 48 through 51 are required to come into compliance with the law.

58. 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.

59. This CAFO constitutes a settlement by and between EPA and Respondent of all claims for civil penalties pursuant to TSCA for the violations alleged herein. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

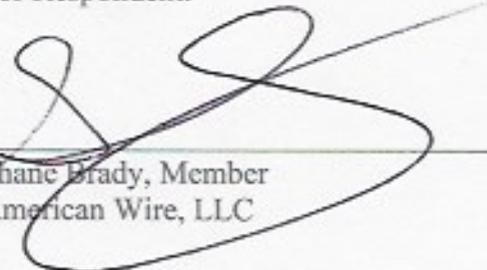
60. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 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).

61. Each undersigned representative of the Parties to this CAFO certifies that he, she, or they are 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.

62. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following addresses: [hchaudary@apslaw.com](mailto:hchaudary@apslaw.com) and [ashoer@apslaw.com](mailto:ashoer@apslaw.com). Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

63. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For Respondent:

  
\_\_\_\_\_  
Shane Brady, Member  
American Wire, LLC

Date: 5/23/22

For Complainant, U.S. EPA, Region 1:

\_\_\_\_\_  
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
EPA, Region 1

Date: \_\_\_\_\_

**FINAL ORDER**

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. Respondents are ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
LeAnn W. Jensen,  
Regional Judicial Officer  
U.S. EPA, Region 1