



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG - 5 2019

REPLY TO THE ATTENTION OF
ECP-17J

VIA ELECTRONIC MAIL

Mr. Duanne Kleckner
President
Kleckner Construction Co., Inc.
131 South LaSalle Street
Aurora, Illinois 60505

Consent Agreement and Final Order – In the Matter of:
Kleckner Construction Co., Inc., Docket No. TSCA-05-2019-0011

Dear Mr. Kleckner:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 5, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,045 is to be paid in the manner described in paragraphs 51 and 52. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christina Saldivar".

Christina Saldivar
Pesticides and Toxics Compliance Section

Enclosure

cc: Tamara Carnovsky, (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2019-0011
)	
Kleckner Construction Co., Inc.)	Proceeding to Assess a Civil Penalty Under
Aurora, Illinois)	Section 16(a) of the Toxic Substances
)	Control Act, 15 U.S.C. § 2615(a)
Respondent.)	
)	



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 Kleckner Construction Co., Inc., a corporation with a place of business located at 131 South LaSalle Street, Aurora, Illinois 60505.
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). *See* 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. §§ 701-06, 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 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), 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 6; 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.

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, required 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, required 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, 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 406(b) of TSCA, 15 U.S.C. § 2686, required the Administrator of 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.

15. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator 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. §§ 2681-2692.

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. § 754.87.

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. Under Sections 402, 404, 406 and 407 of TSCA, 15 U.S.C. §§ 2682, 2684, 2686 and 2687, EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, Residential Property Renovation and Lead-Based Paint Activities, to prescribe procedures and requirements for the accreditation of training programs, certification of individuals and firms engaged in lead-based paint activities, 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).

19. 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.

20. 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 revisions or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

21. 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.

22. 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.

23. 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.

24. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities, with exceptions not relevant here. 40 C.F.R. § 745.82.

25. 40 C.F.R. § 745.84(a)(1) requires that the firm performing the renovation in target housing must provide the owner with the pamphlet no more than 60 days before beginning

renovation activities, and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certification of mailing at least 7 days prior to the renovation.

26. 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.

27. 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.

28. 40 C.F.R. § 745.86(b)(6) requires firms to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

29. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a).

30. 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).

31. Section 16(a) of TSCA, 42 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 \$38,892 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015.

General Allegations

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

33. At all times relevant to this CAFO, Respondent's corporation was a firm as defined by 40 C.F.R. § 745.83.

34. On March 16, 2018, an EPA representative conducted an inspection to monitor Respondent's compliance with Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682(a), 2686, and 2687.

35. On November 7, 2018, Complainant issued a Request for Information to Respondent, seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgements of receipt of a pamphlet by the owners and occupants of residential housing.

36. On December 11, 2018, Respondent provided Complainant with documents responsive to the Request for Information referenced in paragraph 35.

37. Based on the information Complainant received, and building-year information publicly available on the property value assessment websites (accessed on December 12, 2018) of Batavia Township, Blackberry Township, Aurora Township, and Sugar Grove Township; Respondent performed, or directed workers to perform for compensation, the following

modifications of existing structures that resulted in disturbances of painted surfaces as detailed in this Table:

Residential Property Address	Residence Type	Built Year	Contract Date	Contracted Work
6S400 Densmore Road, Aurora, IL 60506	Single-Family	1927	04/15/2016	Replaced garage windows
402 Harmony Drive, North Aurora, IL 60542	Single-Family	1962	08/15/2017	Replaced windows
2S908 Thorncrest Lane, Batavia, IL 60510	Single-Family	1975	09/21/2017	Replaced windows

38. At the three renovations referenced in paragraph 37, Respondent performed or directed to perform 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.

39. The three renovations referenced in paragraph 37 were each performed at residential housing built prior to 1978, and therefore the residential housing was target housing as defined in 40 C.F.R. § 745.103.

Count 1 – Failure to Obtain Firm Certification

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

41. Respondent was not certified as a firm, under 40 C.F.R. § 745.89, during each renovation, as described in paragraph 37, and did not qualify for an exemption under 40 C.F.R. § 745.82(a).

42. Respondent's performance of each renovation, as described in paragraph 37, without certification from EPA constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and 15 U.S.C. § 2689.

Counts 2 to 4 – Failure to Provide the Pamphlet to Owners of Single-Family Housing

43. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

44. Respondent did not provide the owner of each residential unit of target housing, identified in paragraph 37, a pamphlet no more than 60 days before Respondent performed renovation activities at each residential housing.

45. Respondent's failure to provide each owner of target housing, as identified in paragraph 37, a pamphlet no more than 60 days before the renovation activities began, constitutes three violations of 40 C.F.R. § 745.84(a)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 6 – Failure to Retain All Records Necessary to Demonstrate Compliance with 40

C.F.R. Part 745, Subpart E

46. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

47. In the three renovations described in paragraph 37, Respondent failed to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of each renovation.

48. In the three renovations described in paragraph 37, Respondent failed to retain the following records that document the compliance of:

- a. the work practice standards in 40 C.F.R. § 745.85,
- b. a certified renovator was assigned to the project,

- c. the certified renovator provided on-the-job training for workers used on the project,
- d. the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and
- e. the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

49. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of each renovation described in paragraph 37, constitutes a violation of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.86(a), and 15 U.S.C. § 2689.

Civil Penalty

50. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$3,045. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the 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, and the applicable EPA pilot *Lead-Based Paint Graduated Penalty Approach* issued on March 5, 2017.

51. Within 30 days after the effective date of this CAFO, Respondent must pay the \$3,045 civil penalty for the TSCA violations by ACH electronic funds transfer, payable to

“Treasurer, United States of America,” and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment or description field of the electronic funds transfer must state the case title (“In the Matter of Kleckner Construction Co., Inc.”) and the docket number of this CAFO.

52. Respondent must send a notice of payment that states Respondent’s name, complete address, and the case docket 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

Christina Saldivar (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

54. If Respondent does not timely pay the civil penalty by the deadline, 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.

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and

penalties 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

56. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carnovsky.tamara@epa.gov (for Complainant), and klecknersiding@sbcglobal.net (for Respondent).

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

58. 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.

59. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

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

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

62. Each person signing this CAFO 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.

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


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

65. 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: Kleckner Construction Co., Inc.
Docket No. TSCA-05-2019-0011**

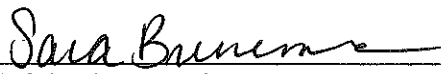
Kleckner Construction Co., Inc.

7-15-19
Date


Duanne Kleckner
President
Kleckner Construction Co., Inc.

United States Environmental Protection Agency, Complainant

7/31/19
Date


for Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division

Consent Agreement and Final Order
In the Matter of: Kleckner Construction Co., Inc.
Docket No. TSCA-05-2019-0011

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.

8/2/19
Date


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

Consent Agreement and Final Order
In the Matter of: Kleckner Construction Co., Inc.
Docket Number: TSCA-05-2019-0011

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on August 5, 2019, this day in the following manner to the addressees:

Copy by e-mail to
Respondent:

Mr. Duanne Kleckner
Kleckner Construction Co., Inc.
klecknersiding@sbcglobal.com

Copy by e-mail to
Attorney of Complainant:

Tamara Carnovsky
carnovsky.tarmara@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: August 5, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5