

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
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Cortese Construction Services Corp. : CONSENT AGREEMENT
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Respondent : AND
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Docket No. : TSCA-02-2021-9267
:
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Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2689 ... of this

title [Section 409 of TSCA, 15 U.S.C. § 2689] shall be liable to the United States for a civil penalty... .” EPA alleges that Cortese Construction Services, Corp. (hereinafter “Respondent”) violated Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations on residential property renovation (“Renovation, Repair, and Painting Rule” or “RRP Rule”), 40 C.F.R. Part 745, Subpart E. Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (“Complainant”) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is incorporated in the State of New York.
2. Respondent’s primary place of business is located at 9074 Main Street, Clarence, NY 14031.
3. Respondent is engaged in the business of residential renovation.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83, with EPA Firm Certification No. NAT-15266-1 valid from May 21, 2019 to June 4, 2024.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692, and set forth at 40 C.F.R. Part 745, including the Renovation, Repair and Painting Rule at 40 C.F.R. Part 745, Subpart E.

6. The RRP Rule was promulgated to ensure that renovation activities in target housing¹ are, at a minimum, conducted by properly trained individuals and in a safe and proper manner to minimize lead exposure to the public, housing occupants and the environment.

7. The RRP Rule requires that firms conduct renovations (as defined in 40 C.F.R. § 745.83) in target housing in accordance with the work practice standards of 40 C.F.R. Part 745, Subpart E, unless (1) the firm has first made or obtained a determination in writing that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to, or in excess of, 1.0 milligrams/per square centimeter (mg/cm²) or 0.5% by weight as described at 40 C.F.R. § 745.82, or (2) the renovation is, itself, a minor repair and maintenance activity as defined at 40 C.F.R. § 745.83.

8. On June 3, 2019, representatives of the United States Environmental Protection Agency, Region 2 (“EPA”), conducted an inspection (the “Inspection”) of Respondent’s primary place of business.

9. Based on the information provided by Respondent during and following the Inspection, EPA alleges that Respondent had performed renovations subject to the RRP Rule in 2018 prior to receiving RRP firm certification.

10. EPA further alleges that Respondent had violated the RRP Rule in the course of renovations performed at the following addresses, all of which are target housing: 320 Evans Street, Williamsville, NY; 2120 Love Road, Grand Island, NY; and 5 Milton Drive, Lancaster, NY.

¹ “Target Housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. § 2681(17) and 40 C.F.R. § 745.223.

11. EPA further alleges that at each of the above addresses, Respondent failed to comply with:

a. 40 C.F.R. § 745.89(a): Failure of a firm that performs, offers, or claims to perform renovations for compensation to obtain initial certification from EPA, pursuant to 40 C.F.R. § 745.81(a)(2)(ii);

b. 40 C.F.R. § 745.84(a)(1): Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1);

c. 40 C.F.R. § 745.85(a)(1): Failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area, pursuant to 40 C.F.R. § 745.85(a)(1);

d. 40 C.F.R. § 745.87(b): Failure to establish or maintain records, pursuant 40 C.F.R. § 745.87(b); and,

e. 40 C.F.R. § 745.89(d)(2): Failure to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, pursuant to 40 C.F.R. § 745.89(d)(2).

12. It is unlawful under Section 409 of TSCA, 15 U.S.C. § 2689, for a firm conducting renovations in target housing subject to the requirements of 40 C.F.R. Part 745 to violate any requirement of the RRP Rule.

13. Each of Respondent's alleged failures to comply with the RRP Rule constitutes an independent violation of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be separately assessed under TSCA §16(a), 15 U.S.C. § 2615(a).

14. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), a violator may be subject to civil penalties up to \$41,056 per violation per day for each violation committed after November 2, 2015, for which a penalty is assessed on or after December 23, 2020.

15. On December 12, 2020, Respondent submitted to EPA an affidavit as to its financial condition in support of settlement.

16. The parties have agreed to settle this matter as set forth herein.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 *et seq.* and its implementing regulations.

2. Respondent certifies that, as of the date of execution of this CA/FO, it is in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401–412, 15 U.S.C. §§ 2681–2692 and the implementing regulations codified at 40 C.F.R. Part 745.

3. For the purposes of this Consent Agreement, Respondent: (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations described in the “Findings of Fact and Conclusions of Law” section, above; and (b) neither admits nor denies the specific factual allegations contained in the “EPA Findings of Fact and Conclusions of Law” section, above.

4. Respondent shall pay, either by cashier's or certified check or electronically by Fedwire or online payment, a civil penalty in the amount of **FORTY NINE THOUSAND NINE HUNDRED DOLLARS (\$49,900)** in accordance with the payment terms and schedule set forth in Paragraph 5, below, and according to one of the payment transmittal methods in Subparagraphs a, b, or c, below:

a. If Respondent chooses to pay by check, each check shall be made payable to "Treasurer of the United States of America" and shall be mailed by one of the following two methods:

STANDARD DELIVERY

**United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O Box 979077
St. Louis, MO 63197-9000**

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

**United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101**

The check(s) shall be identified with a notation thereon listing the following: In the Matter of Cortese Construction Services, Corp., Docket No. TSCA-02-2021-9267.

b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

- 1) Amount of Payment;
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727;**
- 4) ABA number: **021030004;**
- 5) Field Tag 4200 of the Fedwire message should read: “**D68010727 Environmental Protection Agency**”;
- 6) Name of Respondent: **Cortese Construction Services, Corp.;** and
- 7) Case Docket Number **TSCA-02-2021-9267**

c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to Ellis.Demian@epa.gov and Wise.Milton@epa.gov with *In the Matter of Cortese Construction Services, Corp., TSCA-02-2021-9267* as the subject line.

5. The civil penalty of \$49,900, set forth in Paragraph 4, above, must be paid as follows:

a. the first installment of **Twenty-Four Thousand Nine Hundred Fifty Dollars (\$24,950.00)**, consisting of a principal payment of \$24,950.00 and an interest payment of \$0.00 must be received by EPA on or before thirty (30) days after the date of the signature in the Final Order, which appears at the end of this CAFO; and,

b. the second installment of **Twenty-Five Thousand Seventy-Four Dollars and Seventy-Five cents (\$25,074.75)**, consisting of a principal payment of \$24,950.00 and an interest payment of \$124.75, must be paid on or before one hundred and eighty (180) calendar days after the date of the signature in the Final Order, which appears at the end of this CAFO.

6. Failure to pay the full amount of either installment, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

7. If Respondent fails to make timely payment of any one of the required installments in accordance with the schedule set forth in Paragraph 5 of this Consent Agreement, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the following handling charges and late penalty charges in the event of any such failure or default and shall remit such payment in accordance with the payment instructions in Paragraph 4 of this Consent Agreement, above. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

a. Interest: 40 C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is two percent (2%) per annum.

b. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

8. The civil penalty provided for herein is a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal, state or local law.

9. Respondent certifies under penalty of law that:

a. the information in its affidavit it submitted on December 14, 2020 is accurate, complete, and not misleading. EPA has relied on this submission in the negotiation of this settlement.

b. it has requested of EPA that payment of the \$49,900 civil penalty be in installments because of the financial condition of Respondent, *viz.* a onetime payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.

10. Any responses, documentation, and communication submitted to EPA in connection with this Consent Agreement shall be sent via e-mail to Ellis.Demian@epa.gov and Howard.Carl@epa.gov. Unless these EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following e-mail address:

Hammertime@Cortese.net.

11. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail. Delivery of the fully executed documents to the email addressee in the preceding paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

12. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

13. Respondent agrees that all terms of settlement are set forth herein.

14. Respondent voluntarily and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement. Full payment of the penalty shall only resolve Respondent's liability for federal civil penalties for the violations described in Paragraphs 10-11, in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

15. Respondent voluntarily and knowingly consents to the issuance of the accompanying Final Order.

16. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

17. Compliance with the requirements and provisions of this CA/FO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

18. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

19. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

20. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

21. Each party hereto agrees to bear its own costs and fees in this matter.

22. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

Cortese Construction Services, Corp.

RESPONDENT:

BY:



(SIGNATURE)

NAME:

DONNELL CORTESI

(PLEASE PRINT)

TITLE:

Pres

DATE:

24 AUG 21

COMPLAINANT:

For Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

FINAL ORDER

The Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Cortese Construction Services, Corp., Docket Number TSCA-02-2021-9267. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

Walter E. Mugdan
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 2

Date: _____

In the Matter of Cortese Construction Services, Corp., Docket No. TSCA-02-2021-9267

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing Docket Number TSCA-02-2021-9267, in the following manner to the respective addressees below:

Copy by e-mail:

Maples.Karen@epa.gov
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by e-Mail:

Hammertime@Cortese.net
Mr. Domenic Cortese, President
Cortese Construction Services, Corp.
2300 George Urban Boulevard
Depew, NY 14043

Dated: _____
New York, New York
