

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

DOCKET NO. TSCA-03-2013-0106

Cherokee Home Improvements, LLC.)
1432 Hip Roof Road)
Church Creek, MD 21622)

Respondent.)

CONSENT AGREEMENT
Proceeding under Sections 16(a) 409
of the Toxic Substances Control
15 U.S.C. §§ 2615(a) and 2689

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant” or “EPA” or “Agency”) and Cherokee Home Improvements, LLC. (“Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent’s alleged failure, to comply with requirements of 40 C.F.R. Part 745, Subpart E, Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.
3. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Section IV (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the

RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.

III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO”.
6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding *Subchapter IV – Lead Exposure Reduction*, TSCA Section 401 to 412, 15 U.S.C. §§ 2681 to 2692.
12. Section 402(c) of TSCA, 15 U.S.C § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings.
13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.

14. EPA promulgated the Renovation, Repair and Painting Rule (the “RRP Rule”) codified at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation.
15. Under the RRP rule, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and or painting activities in target housing and or child-occupied facilities; must be employed by an EPA-certified renovation firm.
16. 40 C.F.R. § 745.83 defines “person” to mean any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.
17. 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 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 (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.
18. 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.
19. 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.
20. 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.

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. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, of the RRP rule 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).
23. Respondent is and at all times referred to herein was a “person” within the meaning of 40 C.F.R. § 745.83.
24. Respondent is a “firm” and a “renovator” as those terms are defined by 40 C.F.R. § 745.83.
25. Respondent performed “renovations” as that term is defined by 40 C.F.R. § 745.83.
26. On January 25, 2012, duly authorized EPA inspectors conducted an inspection at Respondent’s place of business to determine Respondent’s level of compliance with the RRP Rule.
27. During the January 25, 2012 inspection, the inspectors collected, among other things, four renovation contracts, for renovations conducted at “target housing” as that term is defined by 40 C.F.R. § 745.103.
28. On or about November 1, 2010, Respondent signed a contract to perform a renovation on a property located at 313 E. Church Street, Hebron, Maryland 21830. This property was constructed before 1978.
29. On or about January 15, 2011, Respondent signed a contract to perform a renovation on a property located at 414 Willis Street, Cambridge, Maryland 21613. This property was constructed before 1978.
30. On or about February 25, 2011, Respondent signed a contract to perform a renovation on a property located at 503 Woodcrest Avenue, Salisbury, Maryland 21804. This property was constructed before 1978.
31. On or about January 18, 2011, Respondent signed a contract to perform a renovation on a property located at 1415 Taylors Island, Madison, Maryland 21648. This property was constructed before 1978.

32. The properties described in paragraphs 28 through 31 above are “target housing” as that term is defined by 40 C.F.R. § 745.103.

V. VIOLATIONS

Counts I - IV

33. The allegations contained in Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
32. Pursuant to 40 C.F.R. § 745.86, firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with RRP for a period of three (3) years following completion of the renovation.
33. Pursuant to 40 C.F.R. § 745.86(b), Respondent is required to retain and provide documentation of compliance with the lead-safe work practice standards and post renovation cleaning verification standards found in 40 C.F.R. § 745.85(a) and (b), respectively.
34. Respondent failed to provide and/or retain records documenting compliance with 40 C.F.R. § 745.85(a) for the four contracts for renovations described in paragraphs 28 through 31 above, in violation of 40 C.F.R. § 745.86.
35. Respondent’s failure to provide and/or retain records are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count V

36. The allegations contained in Paragraphs 1 through 35 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
37. Respondent failed to provide and/or retain records documenting compliance with 40 C.F.R. § 745.85(b) for the renovation at 414 Willis Street, Cambridge, Maryland, which is violations of 40 C.F.R. § 745.86.
38. Respondent’s failure to provide and/or retain records is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count VI

39. The allegations contained in Paragraphs 1 through 38 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
40. Pursuant to 40 C.F.R. § 745.89, firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).
41. At the time Respondent entered into the four contracts for renovations described in paragraphs 28 through 31 above, Respondent was not certified by EPA as a “firm” in accordance with 40 C.F.R. § 745.89, and such renovations did not qualify for the exceptions identified in 40 C.F.R. § 745.82(a) or (c).
42. Respondent failed to apply its “firm” to EPA for certification to perform renovations or dust sampling in violations of 40 C.F.R. § 745.89.
43. Respondent’s failure to apply its “firm” to EPA for certification to perform renovations or dust sampling is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

VI. CIVIL PENALTY

44. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Six Hundred Twenty Three Dollars (\$623.00) which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than THIRTY (30) CALENDAR DAYS after the date on which a true and correct copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.
45. The aforesaid settlement amount is based upon Complainant’s consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent’s, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular

facts and circumstances of this case with specific reference to EPA's *Section 1018 — Disclosure Rule Enforcement Response and Penalty Policy*, and 40 C.F.R. Part 19.

46. Payment of the civil penalty amount described in Paragraph 44, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2013-0106;

b. All checks shall be made payable to “**United States Treasury**”;

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 44 shall be sent simultaneously to:

Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

47. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
48. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11(a).
49. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

50. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
51. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

52. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section IV (“Findings of Fact and Conclusions of Law”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

53. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

54. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that it currently in compliance with the provisions of TSCA, the RRP Rule and 40 C.F.R. Part 745, Subpart E.

X. RESERVATION OF RIGHTS

55. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged in Section IV (“Findings of Fact and Conclusions of Law”) herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18 (c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RRP Rule, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

56. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's officers and directors (in their official capacity), successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XII. EFFECTIVE DATE

57. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

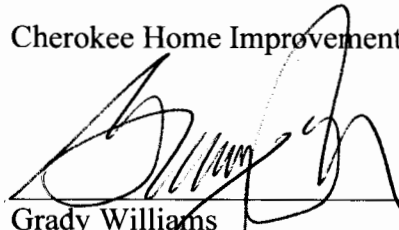
XIII. ENTIRE AGREEMENT

58. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent: Cherokee Home Improvements, LLC.

3/12/13

Date



Grady Williams
Managing Member

For Complainant: U.S. Environmental Protection Agency

3/19/13

Date

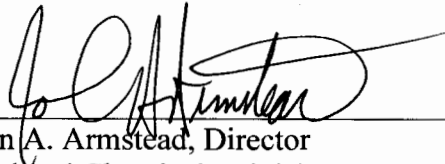


Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

3.27.13

Date



John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

IN RE:)	DOCKET NO. TSCA-03-2013-0106
)	
Cherokee Home Improvements, LLC.)	
1432 Hip Roof Road)	FINAL ORDER
Church Creek, MD 21622)	Proceeding under Sections 16(a) and 40
)	of the Toxic Substances Control Act,
Respondent.)	15 U.S.C. §§ 2615(a) and 2689
)	

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FINAL ORDER

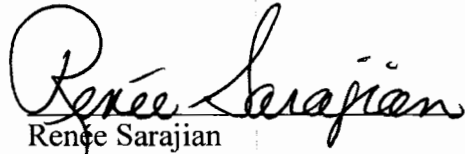
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the Renovate, Repair and Paint Rule, and having determined, based on the representations of the parties to the attached Consent Agreement, that the agreed-upon Six Hundred Twenty Three Dollars (\$623.00) civil penalty was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Six Hundred Twenty Three Dollars (\$623.00) in accordance with the payment provisions set forth in the attached Consent Agreement.

DOCKET NO. TSCA-03-2013-0106

The effective date of the foregoing Consent Agreement and this **FINAL ORDER** is the date on which this **FINAL ORDER** is filed with the EPA Regional Hearing Clerk.

4/2/13
Date


Renee Sarajian
Regional Judicial Officer
U.S. EPA - Region III

CERTIFICATE OF SERVICE

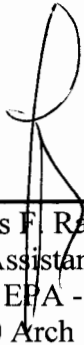
I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. **TSCA-03-2013-0106**, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Respondent:

Mr. Grady Wilson
Cherokee Home Improvements, LLC.
1432 Hip Roof Road
Church Creek, MD 21622

Date

4/3/2013



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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