



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2016 MAY 16 AM 9:55

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2016-0006

IN THE MATTER OF:

L & S Construction, Inc.  
7156 Pecos Street  
Denver, CO 80221

RESPONDENT

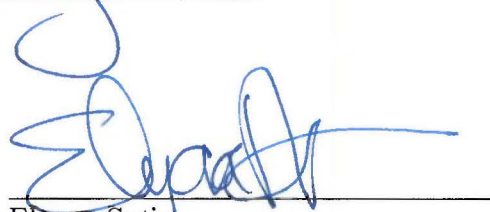
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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 12<sup>th</sup> DAY OF May, 2016.

  
\_\_\_\_\_  
Elyana Sutin  
Regional Judicial Officer



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Ref: 8ENF-L

**MEMORANDUM**

**SUBJECT:** In the Matter of L & S Construction, Inc.  
Combined Complaint and Consent Agreement

**FROM:** David Cobb, Acting Supervisor *David Cobb*  
Toxics Enforcement Unit, Technical Enforcement Program,  
Office of Enforcement, Compliance and Environmental Justice

Jim Eppers, Supervisory Attorney *Jim Eppers*  
Legal Enforcement Program,  
Office of Enforcement, Compliance and Environmental Justice

**TO:** Honorable Elyana R. Sutin, Regional Judicial Officer

With this memorandum, the Office of Enforcement, Compliance and Environmental Justice is transmitting a Combined Complaint and Consent Agreement (CCCA) in the above-referenced matter. We request that you issue a final order approving it.

The EPA has taken this action under the authority of section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615. In the CCCA, the EPA alleges that L & S Construction, Inc. violated the Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule and section 409 of TSCA, 15 U.S.C. § 2689, during a renovation in Arvada, Colorado. The EPA alleges that L & S Construction, Inc. failed to ensure that waste from the renovation was contained to prevent releases of dust and debris before waste was removed from the work area and failed to ensure that the work area was cleaned until no dust, debris or residue remained.

Upon consideration of the factors set forth in section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), the EPA has determined that a civil penalty of twelve-thousand dollars (\$12,000) is appropriate to settle this matter. The proposed settlement is consistent with applicable settlement penalty policies, including the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (August 2010).

TSCA does not require public notice of this settlement.

The mailing address for Respondent is 7156 Pecos Street, Denver, Colorado 80221.

The EPA attorney for this matter is Jessica Portmess, Enforcement Attorney, at (303) 312-7026.



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**Docket No. TSCA-08-2016-0006**

**IN THE MATTER OF:**

**L & S Construction, Inc.  
7156 Pecos Street  
Denver, Colorado 80221**

**Respondent.**

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, L & S Construction, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. Part 745.

**II. STATUTORY AND REGULATORY BACKGROUND**

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting Rule (RRP Rule), codified at 40 C.F.R. Part 745, Subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. "Target housing" means any housing constructed prior to 1978, except for 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 zero-bedroom dwelling. 15 U.S.C. § 2681(17).
6. "Renovation" means 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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.

7. Failure to comply with any provision of the RRP Rule constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. Section 16 of TSCA, 15 U.S.C. § 2615, as modified by 40 C.F.R. Part 19, authorizes the EPA to assess a civil penalty of up to \$37,500 for each violation of section 409 of TSCA, 15 U.S.C. § 2689.

### III. RESPONDENT

8. Respondent is a corporation organized under the laws of the State of Colorado.
9. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a “firm” as defined by 40 C.F.R. § 745.83

### IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. THD At-Home Services, Inc. (THD) issued an order to Respondent for work to be performed on the exterior of a residential property at 14500 West 82<sup>nd</sup> Avenue, Arvada, Colorado (the Jobsite). THD was the general contractor for the project.
12. The Jobsite is a residential property constructed prior to 1978 and is “target housing” as the term is defined in 15 U.S.C. §2681(17).
13. THD performed a test for lead-based paint on the front fascia of the Jobsite and determined lead-based paint was present. The work order issued by THD indicated that the Jobsite tested positive for lead-based paint.
14. Respondent performed a “renovation,” as that term is defined in 40 C.F.R. § 745.83, by removing and replacing the painted fascia and soffit at the Jobsite for compensation.
15. On June 22, 2015, an authorized representative of the EPA performed an inspection of the Jobsite to determine compliance with the RRP Rule.
16. At the time of the inspection, Respondent had completed its work at the Jobsite and employees were loading their work equipment into their truck.

#### Count 1

17. The RRP Rule requires that waste from any renovation be contained to prevent releases of dust and debris before the waste is removed from the work area, pursuant to 40 C.F.R. § 745.85(a)(4)(i).
18. At the time of the inspection, the EPA observed that waste from the fascia and soffit removal was not contained and was being stored in an open-ended box in the work area.
19. Respondent’s failure to ensure that waste from the renovation was contained to prevent releases of dust and debris before waste was removed from the work area constitutes a violation of 40 C.F.R.

§ 745.85(a)(4)(i) and section 409 of TSCA, 15 U.S.C. §2689.

Count 2

20. The RRP Rule requires that the work area be cleaned until no dust, debris or residue remains, pursuant to 40 C.F.R. § 745.85(a)(5).
21. At the time of the inspection, the EPA observed dust, debris and residue on the ground and the exterior windowsills throughout the work area.
22. Respondent's failure to ensure the work area was cleaned until no dust, debris or residue remained constitutes a violation of 40 C.F.R. § 745.85(a)(5) and section 409 of TSCA, 15 U.S.C. §2689.

V. SETTLEMENT

23. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
24. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
25. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. Part 745, Subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
26. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of twelve thousand dollars (\$12,000) is appropriate to settle this matter.
27. Respondent consents and agrees to pay a civil penalty in the amount of twelve thousand dollars (\$12,000) in the manner described below.
28. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
29. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:



**If sent by regular U.S. mail:**

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

**If sent by any commercial carrier or signed receipt confirmation:**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

**If sent by wire transfer:** Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT Address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: U.S. Environmental Protection Agency

**Automated Clearing House (ACH) for receiving U.S. currency:**

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

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

U.S. Treasury Contact Information:  
REX (Remittance Express): 866-234-5681

**Online debit and credit card payment:**

[www.Pay.gov](http://www.Pay.gov)  
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

30. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek  
U.S. EPA Region 8 (8ENF-AT)  
Technical Enforcement Program  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

and

Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

31. In the event payment is not received by the specified due date, interest accrues from thirty (30) days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
32. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31<sup>st</sup>) day from the due date of any payment, and for each subsequent thirty (30) day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
33. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

#### VI. GENERAL PROVISIONS

34. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
35. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
36. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
37. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
38. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:


- a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
  - b. Claims based on criminal liability; and,
  - c. Claims based on any other violations of the Act or federal or state law.
39. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
40. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
41. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
42. Each party to this action shall bear its own costs and attorney fees, if any.
43. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
44. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement.



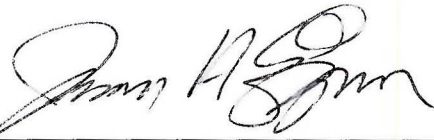
UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 8,

**Complainant.**

Date: 5/12/2016

By:   
David Cobb, Acting Supervisor  
Toxics Enforcement Unit  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-AT)  
U.S. Environmental Protection Agency, Region 8

Date: 5/12/2016

By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-L)  
U.S. Environmental Protection Agency, Region 8

**L & S Construction, Inc.,**

**Respondent.**

Date: 5/4/2016

By: 

Printed Name: Sang G. No

Title: President

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **L & S CONSTRUCTION, INC.; DOCKET NO.: TSCA-08-2016-0006** was filed with the Regional Hearing Clerk on May 12, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on May 16, 2016, to:

Respondent

L &S Construction, Inc.  
Sang G. No  
7156 Pecos Street  
Denver, CO 80221

And emailed to:

Jessica Farmer  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

May 16, 2016

  
\_\_\_\_\_  
John Pickens II  
Paralegal/Regional Hearing Clerk

