

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The State of Washington is authorized under Section 404(a) of TSCA, 15 U.S.C. § 2684(a), and 40 C.F.R. § 745.324(d) to administer and enforce requirements for a renovation, repair, and painting (“RRP”) program in accordance with Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with Section 406(b) of TSCA, 15 U.S.C. § 2686(b).

3.2. Section 404(b) of TSCA, 15 U.S.C. § 2684(b), makes it unlawful for any person to violate or fail or refuse to comply with any requirement of a state program authorized under Section 404 of TSCA, 15 U.S.C. § 2684. See also 40 C.F.R. § 745.324(f)(3).

3.3. The Washington Administrative Code (“WAC”) Title 365 applies to renovations performed for compensation in target housing as specified in the WAC, Chapter 365-230.

3.4. “Target housing” is defined under WAC 365-230-020(78) to mean “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities).”

3.5. “Person” is defined at WAC 365-230-020(61) to include “any natural or judicial person including any individual, corporation, partnership, or association.”

3.6. “Firm” is defined at WAC 365-230-310 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.”

3.7. “Renovation” is defined at WAC 365-230-310 to mean “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces 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, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces.” It does not include minor repair and maintenance activities.

3.8. “Minor repair and maintenance activities” are defined at WAC 365-230-310 as activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or twenty square feet or less of painted surface for exterior activities where none of the work

practices prohibited or restricted by WAC 365-230-330(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas.

3.9. “Renovator” is defined at WAC 365-230-310 as “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.”

3.10. Respondent is a limited liability company organized in the State of Washington.

3.11. Respondent is therefore a “firm” within the meaning of WAC 365-20-310.

3.12. On or about August 24, 2020, Respondent was hired to perform renovation work for compensation by the owner of 7929 11th Avenue Southwest in Seattle, Washington, which is a 2,200 square-foot single-family home that was built in 1923 (“the Renovation”).

3.13. The Renovation involved whole house exterior pressure washing, scraping, and painting, which resulted in the disturbance of more than twenty square feet of exterior painted surface.

3.14. Therefore, the Renovation was a “renovation” on “target housing,” as these terms are defined at WAC 365-20-310 and WAC 365-230-020(78).

COUNT 1

3.15. Pursuant to WAC 365-230-320(1)(a)(i) and (ii), the firm performing a renovation must provide the owner of the property with the EPA pamphlet titled “*The Lead-Safe Certified Guide to Renovate Right*” (the “pamphlet”) no more than sixty days before beginning renovation activities in any residential dwelling unit of target housing and either obtain, from the owner, a written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least seven days prior to the renovation.

3.16. “Pamphlet” is defined at WAC 365-230-310 as the pamphlet “developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, includ[ing] reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet.”

3.17. On or about August 24, 2020, the owner of 7929 11th Avenue Southwest stated to an EPA inspector that Respondent did not provide the property owner with the pamphlet.

3.18. On or about January 27, 2021, Respondent stated to an EPA inspector that they did not have any records pertaining to RRP documentation for renovation work at the Renovation.

3.19. Respondent therefore failed to provide the owner of 7929 11th Avenue Southwest with the pamphlet before beginning renovation activities, which is a violation of WAC 365-230-320(1)(a).

COUNT 2

3.20. Pursuant to WAC 365-230-340(1), the firm performing the renovation must retain and, if requested, make available to the Washington Department of Commerce Lead-Based Paint Program all records necessary to demonstrate compliance with WAC 365-230-340 for a period of three years following completion of the renovation.

3.21. On or about January 27, 2021, Respondent stated to an EPA inspector that they did not have any records pertaining to RRP documentation for renovation work at the Renovation.

3.22. Respondent’s failure to retain all records necessary to demonstrate compliance with WAC 365-230-340 is a violation of WAC 365-230-340(1).

COUNT 3

3.23. Pursuant to WAC 365-230-330(1)(d)(ii), at the conclusion of each workday, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

3.24. On or around August 19, 2020, a Washington State Department of Labor and Industries (L&I) inspector observed the following at the Renovation:

- a. Paint chips on the front stairs, grass yard, and bare ground adjacent to the house.

3.25. On or around August 19, 2020, an L&I inspector observed the following at the adjacent preschool located at 7923 11th Avenue Southwest, Seattle, Washington 98106 (the “preschool”):

- a. Paint chips on the playground slide, play area, and side fence between the Renovation and preschool.

3.26. On or around August 22, 2020, the property owner observed an open plastic garbage bag in their backyard containing paint debris left by the Respondents. The property owner observed the open garbage bag surrounded by paint chips on the bare ground.

3.27. Respondent’s failure to properly store waste collected from renovation activities at the end of each workday and at the conclusion of the renovation to prevent release of dust and debris out of the work area and prevent access to dust and debris is a violation of WAC 365-230-330(1)(d)(ii).

COUNT 4

3.28. Pursuant to WAC 365-230-330(1)(b)(ii)(C), a firm conducting exterior renovations must cover the ground with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

3.29. As stated in Paragraphs 3.24 – 3.25, the L&I inspector observed paint debris lying on the bare ground at the Renovation and adjacent preschool.

3.30. On or around August 24, 2020, the property owner of 7929 11th Avenue Southwest stated to an EPA inspector that Respondent did not use plastic sheeting or other disposable impermeable to cover the ground during the renovation of the Renovation on August 15, 2020 and August 17, 2020.

3.31. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending ten feet beyond the perimeter of surfaces undergoing renovation, or a sufficient distance to collect falling paint debris, is a violation of WAC 365-230-330(1)(b)(ii)(C).

COUNT 5

3.32. Pursuant to WAC 365-230-330(1)(b)(ii)(D), if a renovation affects surfaces within ten feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties.

3.33. As stated in Paragraph 3.25, the L&I inspector observed paint debris lying on the bare ground of the adjacent preschool.

3.34. On or around August 24, 2020, the property owners stated to an EPA inspector that during the renovation of the Renovation on August 15, 2020 and August 17, 2020, Respondents used no containment or other precautions to contain the work area.

3.35. Respondent's failure to erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties is a violation of WAC 365-230-330(1)(b)(ii)(D).

3.36. Under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$41,056 for each such violation, each day such a violation continues.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$5,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's

check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk	Kim Farnham
U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
Region 10	Region 10
R10_RHC@epa.gov	Farnham.Kim@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1 Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from

the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2 Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3 Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

TOM STERNOD, Owner
TDS Home Services, LLC d/b/a Five-Star Painting
of Bellevue

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2023-0044
)	
TDS HOME SERVICES, LLC d/b/a)	FINAL ORDER
FIVE-STAR PAINTING OF)	
BELLEVUE,)	
)	
Renton, Washington,)	
)	
_____ Respondent.		

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: TDS Home Services LLC dba Five-Star Painting of Bellevue, Docket No.: TSCA-10-2023-0044**, was filed with the Regional Hearing Clerk, and was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Lena Freij
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Lena.Freij@epa.gov

Tom Sternod
Owner
TDS Home Services LLC d/b/a Five-Star Painting of Bellevue
213 Southwest 41st Street
Renton, Washington 98057
tom.sternod@fivestarpainting.com

Regional Hearing Clerk
EPA Region 10