

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

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| In the Matter of: | : | |
| | : | |
| Prominent Painters, LLC d/b/a/ Fresh Coat Painters of Charleston | : | U.S. EPA Docket No. TSCA-03-2021-0055 |
| 1923 Harrison Ave. | : | |
| Saint Albans, WV 25177 | : | Proceeding under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. Section |
| Respondent. | : | 2615(a) |

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Prominent Painters, LLC d/b/a/ Fresh Coat Painters of Charleston (“Respondent”) (collectively the “Parties”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a), 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. TSCA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 409 of TSCA (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(5) and 22.4.

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations 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 Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Pursuant to 40 C.F.R. § 745.83, the term "firm" means "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."
13. Pursuant to 40 C.F.R. § 745.83, the term "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 by 40 C.F.R. § 745.223."
14. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term "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."

15. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “firm” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83, at the following properties: 1578 Kanawha Blvd. East Charleston, WV; 1516 Kanawha Blvd. East Charleston, WV; and 917 Lower Ridgeway Rd. Charleston, WV (“Renovation Properties”).
16. The Renovation Properties were constructed prior to 1978 and are “target housing” as that term is defined in Paragraph 14 above.
17. Respondent entered into a series of renovation contracts with the respective owners of the Renovation Properties, for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. § 745.82(a). The table below describes the relevant renovation contracts.

| Property Address | Contract Date |
|--|-------------------|
| 1578 Kanawha Blvd. East Charleston, WV 25311 | November 19, 2018 |
| 1516 Kanawha Blvd. East Charleston, WV 25311 | May 1, 2019 |
| 917 Lower Ridgeway Rd. Charleston, WV 25314 | February 20, 2019 |

18. The above referenced “renovations performed for compensation” did not involve a renovation in target housing or child-occupied facility in which:
 - (1) “a written determination ha[d] been made by an inspector or risk assessor ... 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 ... ,” as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) “a certified renovator, using an EPA recognized test kit ... , has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter ... ,” as provided at as provided at 40 C.F.R. § 745.82(a)(2); or
 - (3) “a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA ... has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter ... ,” as provided at 40 C.F.R. § 745.82(a)(3).
19. On July 23, 2019, Complainant conducted a records inspection at Respondent’s office to determine Respondent’s level of compliance with the RRP Rule (“Records Inspection”).

Count I
Failure to Obtain Firm Certification

20. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
21. Pursuant to 40 C.F.R. §745.89(a) and 40 C.F.R. § 745.81(a)(2)(ii), 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.
22. At the time of the renovations described in paragraph 17 above, Respondent's firm was not certified to perform, offer, or claim to perform renovations under 40 C.F.R. § 745.89 and none of those renovations qualified for the exceptions identified in 40 C.F.R. § 745.82.
23. Count I: Respondent's failure to obtain firm certification from EPA under 40 C.F.R. § 745.89(a), prior to performing renovations at the Renovation Properties constitutes a violation of 40 C.F.R § 745.87(a), and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts II, III, & IV
Failure to Distribute to Property Owners a Copy of EPA's Pamphlet Entitled, "The Lead-Safe Certified Guide to Renovate Right" ("Renovate Right Pamphlet")

24. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
25. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing a renovation must provide to the owner of the Target Housing a copy of the Renovate Right Pamphlet "No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing[.]"
26. To fully comply with 40 C.F.R. § 745.84(a)(1), the firm performing the renovation must also either 1) obtain written acknowledgement that the owner received the Renovate Right Pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)(i); or 2) "obtain a certificate of mailing at least 7 days prior to the renovation" pursuant to 40 C.F.R. § 745.84(a)(ii).
27. At the time of the renovations described in Paragraph 17 above, Respondent's firm did not provide to the owners of the Target Housing a Renovate Right Pamphlet and did not obtain a written acknowledgement of receipt from the owners that they received the pamphlet or received a certificate of mailing at least 7 days prior to the renovation.
28. Counts II, III, & IV: Respondent's failure to distribute to the property owners a copy of EPA's *Renovate Right* pamphlet at the Renovation Properties constitutes three violations of 40 C.F.R § 745.87(a), and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts V, VI, & VII
**Failure to Maintain and Make Available to EPA All Necessary Records to Demonstrate
Lead-Safe Work Practices**

29. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
30. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart, 40 C.F.R. § 745, Subpart E, for a period of 3 years following completion of the renovation.
31. Pursuant to 40 C.F.R. §745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a).
32. At the time of the on-site Records Inspection on July 23, 2019, Respondent had not prepared and retained all records, for renovations performed at the Renovation Properties documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described in 40 C.F.R. § 745.85(a).
33. Counts V, VI, & VII: Respondent's failure to make available to EPA all records necessary to demonstrate that the renovator performed all of the lead-safe work practices described in 40 C.F.R. § 745.85(a), as well as the post-renovation cleaning procedures described in 40 C.F.R. § 745.85(b) at the Renovation Properties constitutes three violations of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

CIVIL PENALTY

34. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of EIGHT THOUSAND NINE HUNDRED FIVE DOLLARS (\$8,905.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
35. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the following: the nature, circumstances, extent and gravity of the violations, and with respect to 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

Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (“LBP Consolidated ERPP”), revised April 2013, and the applicable *Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* issued on September 20, 2019, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

36. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier’s check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2021-0055;
- b. All checks shall be made payable to the “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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Patrick J. Foley
Assistant Regional Counsel
Foley.Patrick.J@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

37. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

38. Payment of the civil penalty is due and payable immediately upon Respondent's receipt of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
39. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).
40. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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.
41. LATE PAYMENT PENALTY: A late payment penalty of six percent 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). 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).
42. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

43. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
44. Respondent certifies that any information or representation it has supplied or made to

EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

45. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

46. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of TSCA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

47. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

48. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and

assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

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


ENTIRE AGREEMENT

50. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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 Consent Agreement and Final Order.

In Re: Prominent Painters, LLC
EPA Docket No. TSCA-03-2021-0055

For Respondent: Prominent Painters, LLC

Date: 7/20/2021

By: 
Robert Smith
Owner

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Patrick J. Foley
Assistant Regional Counsel
U.S. EPA – Region III

Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of Section 16(a) of TSCA, 15 U.S.C. § 2615, and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III