UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 2 8 2019

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED
Article Number: 7018 2290 0000 4960 8352

Siu Cheung, President
Topmost Design and Construction
33-28 202nd Street
Bayside, NY 11361

Re: In the Matter of Topmost Design and Construction
Docket No. TSCA-02-2019-9297

Dear Mr. Cheung:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please note that payment is due within thirty (30) days of the date on which the Regional Administrator signed the enclosed Consent Agreement and Final Order. Please arrange for payment of this penalty according to the schedule and instructions given in the Order.

Sincerely yours,

Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of **Topmost Design & Construction,** Respondent Proceeding under Section 16(a) of the Toxic Substances Control Act	CONSENT AGREEMENT AND FINAL ORDER Docket No. TSCA-02-2019-9297

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).

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Topmost Design and Construction ("Respondent").

2. Respondent's primary place of business is located at 33-28 202nd Street, Bayside, New York 11361.

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.

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. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745, specifically the requirements on Residential Property Renovation at 40 C.F.R. Part 745, Subpart E [the "Renovation, Repair and Painting ("RRP")] Rule.

6. 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.

7. The RRP Rule was promulgated to ensure that renovation activities in target housing[1] 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.

[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 USC Section 2681(17) and 40 C.F.R. Section 745.223.

8. 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 therein, 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. Section 745.82, or (2) the renovation is, itself, a minor repair and maintenance activity as defined at 40 C.F.R. § 745.83.

9. On or about February 4, 2016, EPA received from the New York City Department of Health and Mental Hygiene ("NYCDOHMH") a referral based on an inspection that NYCDOHMH has conducted the day before at a residential property located at 151 2nd Avenue in Manhattan.

10. EPA conducted a search of the New York City Department of Buildings ("DOB") website which revealed that a permit for renovations at the above address had been issued to Topmost Design and Construction, 33-28 202nd Street, Bayside, New York.

11. On April 26, 2016, EPA sent an Information Request Letter ("IRL") to Respondent requesting information regarding the renovations conducted by Respondent at the 151 2nd Avenue address and Respondent's compliance with the RRP Rule. On May 3, 2016, Respondent, submitted a response to EPA's April 26, 2016 IRL, which EPA received on May 17, 2016.

12. Based on the information obtained from the referral and the IRL response, EPA alleges that Respondent violated the RRP Rule in the course of renovations conducted in target housing at the 151 2nd Ave. address.

13. EPA further alleges that Respondent violated the RRP Rule as follows: (a) by failing to obtain lead-safe firm certification prior to engaging in lead-based paint renovations, under 40 C.F.R. § 745.89(a), as required by 40 C.F.R. § 745.81(a)(2)(ii); (b) by failing to contain the work area so that no dust or debris left the work area while the renovation was being performed, as required by 40 C.F.R. § 745.85(a)(2); and (c) by failing or refusing to establish and maintain records, or to make available such records, as required by 40 C.F.R. § 745.87(b).

14. Each of Respondent's alleged failures to comply with the RRP Rule constitute independent violations 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).

15. On February 15, 2019, EPA sent Respondent a letter setting out the alleged violations and extending an offer to meet. EPA and the Respondent held informal pre-filing settlement conferences, as a result of which the parties agreed to enter into this Consent Agreement.

16. On March 21, 2019, Respondent submitted financial information and documentation regarding its financial condition and demonstrating an inability to pay the proposed penalty in this matter.

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. Respondent further certifies, under penalty of law, that:

> The financial information and documentation it submitted to EPA on March 21, 2019, regarding Respondent's financial condition is accurate, complete, and not misleading. Respondent understands that EPA has relied on the accuracy of this financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Respondent understands that EPA retains the authority to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation provided and/or representations made to EPA regarding Respondent's finances is false or, in any material respect, inaccurate.

4. 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 "Findings of Fact and Conclusions of Law" section, above.

5. Respondent shall pay, either by cashier's or certified check or electronically by Fedwire, a civil penalty in the amount of **THREE THOUSAND ONE HUNDRED DOLLARS ($3,100.00)** due on or before 30 calendar days from the date of signature of the Final Order at the end of this document.

a. If payment is made by check, then such 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

or

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 shall be identified with the case name and docket number: In the Matter of Topmost Design & Construction, Docket No. TSCA-02-2019-9297.

b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank when the 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: **Topmost Design & Construction**; and
7) Case Docket Number **TSCA-02-2019-9297**.

6. 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. Forty 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 one percent (1%) per annum for calendar year 2018.

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).

7. Failure to pay the full amount of the penalty, 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.

8. Respondent has agreed to implement a Compliance Plan addressing the following broad categories of compliance with TSCA and the RRP regulations codified at 40 C.F.R. Part 745:

a. Maintaining & Renewing EPA RRP Firm certification(s);

b. Obtaining, Maintaining & Renewing RRP certifications for individual renovators, which are issued by EPA-accredited training providers as a course completion certificate upon completion of the course;

c. Training of Respondent employees who perform RRP work. Such training shall include lead-safe work practices of 40 C.F.R. Part 745.85(a), and how to fill the Forms and checklist included in the RRP Compliance Packet, which is attached to the Compliance Plan and incorporated by reference into this CA/FO, for each job performed by Respondent;

d. Creation and retention of records of compliance;

e. Compliance with lead-safe work practice standards for renovation projects;

f. Compliance with post-renovation cleaning verification requirements; and

g. Management of general contractor/subcontractor roles for RRP Rule projects.

Respondent will also utilize a "RRP Compliance Packet" which consists of Forms and checklists in conjunction with each renovation job in order to ensure proper Lead Safe Work Practices and recordkeeping. EPA has approved of the Compliance Plan and RRP Compliance Packet, appended to this CA/FO as Attachments 1 and 2, respectively, and incorporated herein.

9. Respondent shall implement the Compliance Plan, including use of the RRP Compliance Packet, at all target housing and child-occupied facilities at which Respondent performs renovations subject to the provisions of 40 C.F.R. Part 745. Implementation of the Compliance Plan and use of the RRP Compliance Packet is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to compliance therewith. Adherence to the provisions of the Compliance Plan and use of the RRP Compliance Packet and compliance with the provisions of this Consent Agreement with regard to the implementation of the Compliance

Plan and use of the RRP Compliance Packet shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745 nor a defense to the failure to do so.

10. Respondent shall submit reports to EPA documenting its implementation of the Compliance Plan and use of the RRP Compliance Packet (hereinafter "CP Reports") in accordance with the following terms:

a. Respondent shall prepare quarterly CP Reports to EPA for a period of one year commencing ninety (90) days from the date of signature of the Final Order. Each quarterly CP Report shall be submitted by Respondent and received by EPA no later than 15 days from the end of the preceding quarter.

b. Each report shall summarize RRP activities performed and state the number of RRP renovations undertaken during the preceding quarter. The Report shall also include the following:

(1) The complete address of any renovation job conducted or underway at the time of the report and the areas renovated or to be renovated (e.g., apartment number(s) common area, exterior);

(2) The type of the renovation (e.g., residential home, multi-family apartment building, school building, conversion to housing);

(3) The specific renovation work performed;

(4) The original date of construction of the building(s);

(5) If a multi-family building, provide the number of floors and number of apartments per floor;

(6) Whether the Renovation Site was/will be occupied at the time of the renovation;

(7) The name, address and telephone number of the individual who was/will be the on-site certified renovator for the work and include a copy of his/her RRP training certificate;

(8) The name, address and telephone number of each subcontractor specifying the type of work each subcontractor performed or will perform at each renovation.

(9) The name, address, and telephone number of the building owner; and

(10) The scheduled dates of work, including start date and projected finish date.

c. In the event that no work subject to the provisions of 40 C.F.R. Part 745 is undertaken in a given quarter, Respondent shall so state in the CP Report for that quarter.

d. The CP Reports shall be sent to the following addresses:

Demian Ellis
U.S. EPA – Region 2
Lead Paint and Pesticides Compliance Section
2890 Woodbridge Road – MS-225
Edison, New Jersey 08837
ellis.demian@epa.gov

A copy of the cover page or transmittal e-mail only shall be sent to:

Stuart Keith, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA – Region 2
290 Broadway – 16th Floor
New York, N.Y. 10007-1866
Keith.stuart@epa.gov

e. Each CP Report shall contain the following certification signed by an appropriate corporate official:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for

obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.

11. Respondent shall be subject to stipulated penalties for the failure to (1) provide the required substantive content in the CP Report or (2) submit the required CP Reports in a timely manner as follows:

a. 1 – 30 days delinquent --$500 per day

b. 30 – 60 days delinquent - $750 per day

c. Each day past 61 days: $1,000 per day

All Stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of the stipulated penalties shall be made in the same manner as prescribed in Paragraph 5 of the Consent Agreement Section above, for payment of the civil penalty. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment but need only be paid upon demand.

12. Following receipt of the CP Report EPA will either:

a. accept the CP Report(s); or

b. reject the CP Report(s) and notify Respondent, in writing, of deficiencies in the CP Report, granting Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the CP Report to EPA. If the identified deficiency(ies) in the CP Report is/are the result of a failure of substantive compliance, then EPA will provide Respondent with an opportunity to respond and/or correct the deficiencies. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds the

same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 12 above.

13. If in the future EPA believes that any of the information in the documentation or CP Reports certified to, pursuant to paragraph 11(e), above, is inaccurate, EPA will advise Respondent of its belief and its basis for such and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certification(s) is (are) mostly inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 12, above for non-compliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq. or any other applicable law.

14. EPA Region 2's Director of the Enforcement & Compliance Assurance Division, may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's written submission, EPA determines that Respondent failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.

15. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the CP Report(s) as required herein, Respondent shall notify EPA in writing within (14) days of the delay or Respondent's knowledge of the anticipated delay,

whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the submission of the CP Reports caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such event.

b. If the parties agree that the delay or anticipated delay in the submission of the CP Report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period of no longer than the Delay resulting from such circumstances.

c. In the event that EPA does not agree that a delay in submitting the CP Report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent.

16. Any responses, documentation, and communication (other than the CP) submitted in connection with this Consent Agreement shall be sent to:

Demian Ellis
Senior Enforcement Officer
Lead Paint and Pesticides Compliance Section
Pesticides and Toxic Substances Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2

2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837

And copy of the cover page only or transmittal e-mail to:

Stuart Keith, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Siu Hung Cheung, President
Topmost Design & Construction
33-28 202nd Street
Bayside, New York 11361

17. Full payment of the penalty described in paragraph 5 of the Consent Agreement section, above, shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 12 and 13 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.

18. Nothing in this document is intended nor shall be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

19. The civil penalty and any stipulated penalties provided for herein are "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.

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

21. Respondent consents to the issuance of the accompanying Final Order.

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

23. Respondent explicitly 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.

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

25. 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.

26. 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.

27. 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.

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

29. Respondent consents to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Topmost Design & Construction
Docket No. TSCA-02-2019-9297

Topmost Design & Construction

RESPONDENT: BY: _____
(SIGNATURE)

NAME: SIU HUNG, CHEUNG
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 7/29/19

COMPLAINANT:

_____

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

DATE: AUG - 5 2019

FINAL ORDER

The 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 Topmost Design & Construction, Docket Number TSCA-02-2019-9297. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. 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. 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)).

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency – Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Date: 8/22/19

In the Matter of Topmost Design & Construction
Docket No. TSCA-02-2019-9297

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the below-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

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

Copy by Certified Mail Return Receipt Requested:

Mr. Siu Hung Cheung, President
Topmost Design & Construction
33-28 202nd Street
Bayside, New York 11361

Dated: 8/28/19
New York, New York

ATTACHMENT 1

Topmost Design & Construction, Inc.

RRP RULE COMPLIANCE PLAN

I. Introductory Statement.

This Compliance Plan ("the Plan") is being implemented in order to promote compliance by Topmost Design & Construction, Inc. with the requirements for Residential Property Renovation, codified at Title 40 of the Code of Federal Regulations, Part 745, Subpart E, commonly known as the Renovation, Repair, and Painting (RRP) Rule. The Plan is designed to help ensure that covered companies and their employees, engaged in renovation activities involving residential "target housing" properties[1] and "child-occupied facilities,"[2] have the necessary guidance and/or training to conduct renovation activities in compliance with the RRP Rule. Because Topmost Design & Construction may engage in renovation activities involving residential "target housing" properties and "child-occupied facilities" from time to time, Topmost Design & Construction is hereby adopting this Plan.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE REQUIREMENTS IN THIS DOCUMENT AND THE RRP RULE, THE RRP RULE PREVAILS.

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[1] "Target Housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a 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. Section 2681(17); see also,40 C.F.R. § 745.223.

[2] "Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83.

II. Objective.

The objective of the Plan is to ensure Topmost Design & Construction's compliance with the RRP Rule where applicable. This Plan does not address compliance with EPA's other lead-based paint laws or regulations or those of other federal, state, or local agencies.

III. Applicability.

This Plan covers all Topmost Design & Construction's employees and Topmost-engaged contractors and subcontractors working on projects involving the "renovation," as that term is defined at 40 C.F.R. § 745.83, of property originally constructed prior to 1978. Note, that in addition to pre-1978 residential structures and child-occupied facilities, the conversion of any class of property (e.g., Commercial, Industrial, etc.) constructed prior to 1978 to residential use makes such property subject to the requirements of 40 C.F.R. Part 745 and this Plan.

IV. Procedures.

This document, adopted by Topmost Design & Construction, sets forth procedures that will address the following broad categories of compliance that apply to the Rule cited above: A) Obtaining, maintaining and renewing the EPA RRP-Firm Certification(s); B) Obtaining, Maintaining and renewing RRP Certifications of Individual Renovators, which are issued by EPA-accredited training providers; C) On-the-job training of uncertified Topmost Design & Construction employees who perform RRP work; D) Pre-renovation education of owners and occupants; E) Compliance with lead-safe work practice standards for renovation projects; F) Compliance with post-renovation cleaning verification; G) Creation and retention of records of compliance; and H) Management of general contractor/subcontractor roles for RRP Rule projects.

A. Firm Certification.

RRP Rule – Topmost Design & Construction has obtained EPA RRP Firm Certification under certificate number NAT-F166473-1, valid from June 24, 2016 through July 8, 2021. Prior to Topmost Design & Construction's certification expiring, it will take the necessary steps to renew its firm's certification.

B. Individual certification(s).

Topmost Design & Construction's individual Renovators' certifications shall be kept in an electronic file database that is monitored by Topmost Design & Construction. As expiration dates near, Renovators shall be scheduled for a "Refresher" class at an EPA-accredited training provider. Once training is completed, certifications for individual renovators are issued by the training provider as a course completion certificate upon completion of the course.

C. Training of Respondent's employees.

RRP Rule - As the general contractor, whenever Topmost Design & Construction undertakes a project that is subject to the RRP Rule, it will ensure that an RRP Certified Renovator(s) (appropriately trained individual(s) in possession of a current Renovator certificate issued by an EPA-accredited training provider (school)) is assigned to that project. The assigned Certified Renovator(s) may be an employee(s) of Topmost Design & Construction, or of a subcontractor(s) Topmost Design & Construction engages. This assigned Certified Renovator(s) will be responsible, in part, for compliance with the RRP Rule for that project, and in that role must perform, and document, a number of specific RRP Rule

compliance-related functions. This assignment of a Certified Renovator must take place prior to the commencement of a project subject to the RRP Rule.

1. **Assigned Certified Renovator(s) -** If Topmost Design & Construction chooses an employee(s) as the assigned Certified Renovator(s), that employee(s) must have valid and current Renovator certification from an EPA-accredited training provider before such employee(s) can serve the Certified Renovator function.

2. If Topmost Design & Construction is involved in multiple concurrent projects, Topmost Design & Construction will be required to ensure the availability of a sufficient number of Certified Renovators to maintain proper coverage and insure compliance with the RRP Rule at all renovations.

3. For each RRP project, a Certified Renovator must train any uncertified workers on the lead-safe work practices that they will be using in performing the RRP work. The Certified Renovator will create a record of this training, and Topmost Design & Construction will retain all RRP records of compliance (see item F below) contained in the RRP Compliance Packet, which is Attachment 2. The assignment of the Certified Renovator must take place prior to commencement of the project subject to the RRP Rule.

D. Pre-Renovation Education.

Whether or not Topmost Design & Construction engages a contractor or subcontractor on a project, Topmost Design & Construction will ensure compliance with the Information Distribution (Renovate Right booklet) requirements of the RRP Rule.

E. Work Practice Standards.

Whether or not Topmost Design & Construction engages a contractor or subcontractor on a project, Topmost Design & Construction will ensure compliance with the work practice standards and proper documentation of compliance with (both renovation and post-renovation cleaning verification) the RRP Rule.

F. Records Retention and Submission

1. Topmost Design & Construction will generate and maintain the following records of compliance with the RRP Rule for each renovation it conducts:

- Documentation that one or more certified renovators was assigned to each project, including the name of each individual certified renovator assigned and a copy of his or her current certificate;
- Documentation that a certified renovator provided on the job training and direction to workers who perform regulated renovation. If only a certified renovator(s) was present and no other workers were at the project, the documentation should so state;
- Documentation that a certified renovator performed the post-renovation cleaning verification;
- Signed and dated acknowledgements of receipt of the Renovate Right pamphlet from both owners and/or occupants (i.e., pre-renovation education) or certificates of mailing providing proof of attempted distribution of the Renovate Right pamphlet.

- Documentation of results of any testing performed by an inspector, risk assessor or certified renovator;
- Documentation that when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, Topmost Design & Construction provided information pertaining to compliance with the RRP to the owner of the building and, if different, an adult occupant of the dwelling, or if the renovation took place in a child-occupied facility, an adult representative of the child-occupied facility.
- Documentation of compliance with work practice standards and any other provisions of the RRP Rule not specified above.

2. Topmost Design & Construction will maintain these records for each renovation for a minimum of 3 years after completion of the work. If the specified documents are maintained in hard copy, all such documents covering all projects with RRP Rule requirements shall be maintained at Topmost Design & Construction's office located at 33-28 202nd Street, Bayside, NY 11361, in a central file dedicated to RRP Rule documentation, with copies of the specified documents to be kept with the individual project files (including scope of work, contracts, proof of payment). If hard copy records are not maintained, the specified records shall be maintained electronically in a folder dedicated to RRP Rule documentation in an easily-accessible format, and copies of the specified RRP-compliance documents shall also be kept with the individual project files or folders. All electronic files containing the specified documents shall be backed up regularly and copies shall be maintained off-site, in the cloud or on some

independent medium to prevent inadvertent loss or destruction of the data. Records shall be maintained in PDF format or another format to prevent modification of historical data.

3. As set forth in the attached Consent Agreement and Final Order, Topmost will submit quarterly reports containing the above information for a period of one year from the date of signature of the Final Order. After the reporting time period expires, Topmost should be prepared to provide the information to EPA upon request.

G. Managing general contractor/subcontractor roles for projects subject to the RRP Rule.

1. Whenever Topmost Design & Construction engages any contractor or subcontractor on a project, Topmost Design & Construction will ensure RRP compliance (firm certification, worker training, lead-safe work practices, record keeping, etc.), creation and retention of all records of compliance (and provide copies to whichever firm contracted the work to Topmost Design & Construction), and information distribution ("Renovate Right" booklet (https://www.epa.gov/lead/materials-and-downloads-renovators-renovation-repair-and-painting), etc.) to the owner and/or tenants, as required/applicable.

2. Before Topmost Design & Construction engages any contractor or subcontractor on a project, Topmost Design & Construction will seek (and retain) documentation that any such firm is EPA-certified for RRP. Topmost Design & Construction shall also seek and retain documentation that any such subcontractor uses certified/trained workers at a renovation as required/applicable and that a

specifically identified Certified Renovator has been assigned prior to the commencement of the project as the Certified Renovator to satisfy the assigned Certified Renovator responsibilities OR Topmost Design & Construction will perform all such tasks itself. Upon completion of the project, Topmost Design & Construction will ensure all requirements of the RRP Rule are met and Topmost Design & Construction will require the subcontractor to provide Topmost Design & Construction with a copy of all records of compliance that Topmost Design & Construction will then retain in its files for a minimum of 3 years after completion of the project.

TOPMOST DESIGN & CONSTRUCTION, INC.

LEAD PAINT REGULATIONS COMPLIANCE PLAN

COMPLIANCE PLAN AUTHORIZATION AND EFFECTIVE DATE (ATTESTED BY HIGHEST CORPORATE OFFICER)

Name and Title

Date

Signature of Authorized Officer

8/2/19
Date

Sin Hung Cheung
Print Name of Authorized Officer

President
Title

ATTACHMENT 2

COMPLIANCE PACKET FOR RENOVATIONS REGULATED BY THE LEAD RENOVATION, REPAIR, AND PAINTING (RRP) RULE

CHECKLIST FOR RENOVATIONS REGULATED BY THE RRP RULE

THE PURPOSE OF THIS FORM IS TO DOCUMENT COMPLIANCE WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S LEAD RENOVATION, REPAIR, AND PAINTING RULE ("RRP RULE"), 40 C.F.R. § 745.80, *et seq.*, OR ANY APPLICABLE U.S. EPA-AUTHORIZED STATE OR TRIBAL PROGRAM REGULATING LEAD-BASED PAINT SAFE WORK PRACTICES.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE REQUIREMENTS IN THIS DOCUMENT AND THE RRP RULE, THE RRP RULE PREVAILS.

General Project Information:

Property Address:_____

_____

City State Zip

Contractor/subcontractor firm name and certification number (copy of the firm certificate must be on file with Respondent)

_____

Firm Name Certification Number

Assigned certified renovator name & certification number (copy of training certificate must be available on the work site and attached to this checklist):

_____

Renovator Name Certification Number

Brief description of Renovation Project (include painted surfaces disturbed and estimated size):

_____

_____

Did the contractor/subcontractor obtain a written determination from a certified inspector or risk assessor that lead-based paint was not present on the components affected by the renovation?

_ **Yes and a copy of the determination is attached to this checklist.** ***(Form is COMPLETE. Sign Certification on last page.)***

_ **No** *(Continue to Next Section, "Lead Testing Information")*

LEAD TESTING INFORMATION:

Were EPA or applicable state recognized lead test kits used by certified renovator on each and every component (for example, each window to be replaced must be tested unless it is assumed to have lead-based paint) to determine whether lead was present on components affected by renovation?

Yes ***N/A***

Identify workers and kits used and describe components tested, sampling locations and results below. Follow the lead test kit directions completely when testing components. Document paint chip sampling using the template on the following page and attach any laboratory results.

Certified Renovator Name	Certification Number

Attach additional sheets as needed.

Test Kit Manufacturer and Model	Date of Testing	Component and Location Tested	Result

Attach additional sheets as needed

Note -- Each window to be replaced must be tested unless it is assumed to have lead-based paint. See EPA Guidance for appropriate surfaces to test on each window/window assembly.

CHECKLIST FOR RENOVATIONS REGULATED BY THE RRP RULE

General Information
Name of Property Owner: _____
Address: _____
City: _____ State: ___ Zip code: _____ Contact#: (_) _____
Email: _____

Renovation Information
Renovation Address: _____ Unit#: _____
City: _____ State: _____ Zip code: _____
Certified Firm Name:
Address: _____
City: _____ State: _____ Zip code: _____ Contact #: (___) ___-_____
Email: _____
Certified Renovator Name: _____
Date Certified _____/_____/_____

For <u>each</u> sample collected, fill out all of the following information:
Sample Identifier: _____
Sample Collector Name: _____
Sampling Location: _____
Sampling site description: _____ Date of Collection: / /
Sample Dimensions (cm): _____ Calculate Sample Area (cm) _____
*NLLAP-recognized entity and location: _____
Submission date: / / Results: _____ Result Date:

Attach additional sheets as necessary.
*National Lead Laboratory Accreditation Program

Was lead-based paint determined to be present on the components affected by the renovation?

_ **Yes** *(Continue to Next Section, "Notification, Work Practices, and Recordkeeping").*

_ Presumed to be present on the components affected by the renovation *(Continue to Next Section, " Notification, Work Practices, and Recordkeeping").*

_ **No** ***(Form is COMPLETE, complete and sign Certification on last page.)***

CHECKLIST FOR RENOVATIONS
REGULATED BY THE RRP RULE

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING:

(40 C.F.R. Parts§§ 745.84-745.86 or applicable state program)

Please acknowledge one of the following:

☐ Signed and dated acknowledgments of receipt of the Renovate Right pamphlet from, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units, owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist;

OR

☐ Certificates of mailing of the Renovate Right pamphlet to the following, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units; owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist.

OR

☐ Certificates of attempted delivery of the Renovate Right pamphlet to adult occupants of dwelling units or adult representatives of child-occupied facilities are attached to this checklist.

Comments on pamphlet delivery *(i.e.,* obstacles encountered and how they were addressed):

_____

_____

_____

If the Renovation Project involved a common area of a multi-unit building, was a signed statement describing the steps taken to notify all occupants of multi-unit housing of the renovation activities, to provide the Renovate Right pamphlet to all occupants, and to inform of any changes to the renovation activities, obtained and attached?

Yes _ **Not Applicable (N/A)**

If the Renovation Project was performed in a child-occupied facility, was a signed statement describing the steps taken to notify all parents and guardians of children using child-occupied facilities of the renovation activities, to provide the Renovate Right pamphlet, and to provide a copy of the records showing compliance with the RRP Rule and any dust clearance sampling reports obtained and attached?

Yes ***N/A***

_____

_____

_____

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING: continued

If applicable, certified renovator provided training to workers on (check all that apply):

- ☐ Posting warning signs
- ☐ Maintaining containment
- ☐ Setting up plastic containment barriers
- ☐ Avoiding spread of dust to adjacent areas
- ☐ Waste handling
- ☐ Post-renovation cleaning

List Names of workers trained (attach a copy of any records documenting which elements were taught to each worker):

_____

_____

_____

_____

Certified Renovator posted signs defining work area to keep others out of renovation work area. Warning signs were posted at entrance to work area.

Yes ***N/A***

Work area contained to prevent spread of dust and debris? (Check all that apply)

(INTERIOR)

- ☐ All objects in the work area were removed or covered.
- ☐ HVAC ducts in the work area were closed and covered.
- ☐ Windows and doors in the work area were closed and sealed.
- ☐ Floor surfaces covered by plastic extending 6 feet from work area.
- ☐ Doors in the work area were closed and sealed.
- ☐ Doors that must be used in the work area were covered to allow passage but prevent spread of dust.
- ☐ Floors in the work area were covered with taped-down plastic.

(EXTERIOR)

- ☐ Windows in and within 20 feet of the work area were closed.
- ☐ Doors in and within 20 feet of the work area were closed and sealed.
- ☐ Ground was covered by plastic extending 10 feet from work area - plastic anchored to building and weighed down by heavy objects.
- ☐ If necessary, vertical containment was installed if property line prevents 10 feet of plastic ground cover, or if necessary to prevent migration of dust and debris to adjacent property.

NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING: (continued)

Please acknowledge the following if applicable:
None of the prohibited and restricted work practices was employed.

Yes ***NIA***

Waste was contained on-site and while being transported off-site.

Yes ***NIA***

Work site was properly cleaned after renovation (check all that apply):

Yes ***NIA***

- ☐ All chips and debris were picked up, protective sheeting misted, folded dirty side inward, and taped for removal;
- ☐ Plastic sheeting misted, folded dirty side inward, and taped for removal; and
- ☐ Work area surfaces, walls, and objects were cleaned using HEPA vacuum and/or wet-cloths or mops (interiors).

Certified renovator performed post-renovation cleaning verification. Describe results, including the number of wet and dry cloths used:

_____

_____

_____

_____

_____

OR

If dust clearance testing was performed instead of cleaning verification, the sample results were below clearance standards and a copy of the report was provided to property owners and, if not owner-occupied, adult occupants of residential dwellings or adult representatives of child-occupied facilities and posted in common areas of any multi-unit housing. A copy of the results is attached to this checklist.

Yes **N/A**

Name(s) of dust sampling technician, inspector, or risk assessor, if used (attach copies of their certification to this checklist):

_____

_____

If the renovation is an emergency renovation under the RRP Rule, describe in detail the nature of the emergency, the work that was done, and document the provisions of the RRP Rule that were not followed and the post-renovation cleanup.:

_____

_____

_____

_____

_____

CONTRACTOR/SUBCONTRACTOR CERTIFICATION

I, the undersigned contractor/subcontractor, certify under penalty of law that the above information is true and complete, and do hereby certify that I have complied with all requirements of the Lead Renovation, Repair, and Painting Rule ("RRP Rule"), 40 C.F.R. § 745.80, et seq., and/or any applicable state laws or program regulating lead-based paint safe work practices, including compliance with all information distribution, notice requirements and work practice standards in performing this Renovation Project. I certify that I have provided the occupants (if any) of the Property to be Renovated, with all documentation required to be supplied under the RRP Rule and/or state program, shall retain all records required by law for at least 3 years or longer if required by state law, and shall provide copies to EPA of all the records required to be retained by the RRP Rule or applicable state program upon request. I have provided _____. with a completed copy of this Renovation Recordkeeping Checklist and all associated documentation to support its contents.

_____ _____

Contractor/subcontractor Name and Title Date

_____ _____

Signature of Authorized Officer Date

_____

Print Name of Authorized Officer

_____

Title