



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JUN 12 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA E-MAIL

Mr. Tewelde Bahta
Owner/Member
Leonard Oaks, LLC
2991 Riverwoods Drive
Rockford, Michigan 49341

tbahta@sbcglobal.net

Consent Agreement and Final Order – In the Matter of: Leonard Oaks, LLC.
Docket No. TSCA-05-2018-0007

Dear Mr. Bahta:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 12, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$900 is to be paid in the manner described in paragraphs 50 and 51. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Saldivar".

Christina Saldivar
Pesticides and Toxics Compliance Section

Enclosure

cc: Gillian Asque, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Leonard Oaks, LLC,
Grand Rapids, Michigan,

Respondent.



) Docket No. TSCA-05-2018-0007

) Proceeding to Assess a Civil Penalty Under
) Section 16(a) of the Toxic Substances
) Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Leonard Oaks, LLC, a limited liability corporation with a place of business located at 2991 Riverwoods Drive, Rockford, Michigan 49341.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the

civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.
9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy

to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

11. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

14. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681-2692.

15. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 754.87.

16. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

17. Under Sections 402 and 407 of TSCA, 15 U.S.C. §§ 2682 and 2687, EPA promulgated regulations amending at 40 C.F.R. Part 745, Subparts E and L, Residential Property Renovation and Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities.

18. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

19. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion, thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may

generate paint dust)); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

20. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

21. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

22. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities, in accordance with 40 C.F.R. § 745.82.

23. 40 C.F.R. § 745.85(a) requires that renovations, as defined in 40 C.F.R. § 745.83, must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

24. 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) requires firms that perform, offer, or claim to perform renovations, as defined in 40 C.F.R. § 745.83, for compensation to apply for and obtain certification from EPA to perform renovations at target housing or child-occupied facilities, with exceptions not relevant here.

25. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

26. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator was assigned to the renovation project.

27. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a).

28. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$37,500 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after January 9, 2009 through November 2, 2015, and up to \$38,114 per violation for each day of violation that occurred after November 2, 2015.

General Allegations

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as if set forth in this paragraph.

30. At all times relevant to this CAFO, Respondent was a limited liability corporation with a place of business located at 2991 Riverwoods Drive, Rockford, Michigan 49341.

31. At all times relevant to this CAFO, Respondent's corporation was a *firm* as defined by 40 C.F.R. § 745.83.

32. Beginning on June 1, 2016, Respondent performed window replacements or directed workers to replace windows in the property located at 547-549 Jefferson SE, Grand Rapids, Michigan 49503.

33. The window replacements that Respondent performed or directed at the property listed in paragraph 32 above, was a modification of the buildings' existing structure that resulted in disturbance of painted surfaces.

34. Respondent's modification of the buildings' existing structure described in the preceding paragraph was a *renovation* as defined in 40 C.F.R. § 745.83.

35. Respondent either performed or directed workers to perform for compensation, the renovations described in paragraph 32 above.

36. Respondent was a *renovator* as defined in 40 C.F.R. § 745.83.

37. The building listed at the address in paragraph 32 above, was residential housing built prior to 1978.

38. The building listed at the address in paragraph 32 was *target housing* as defined in 40 C.F.R. § 745.103.

Count I – Failure to Obtain Firm Certification

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

40. 40 C.F.R. § 745.81(a)(2)(ii) requires that 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(a) or (b).

41. Respondent was not certified as a firm, under 40 C.F.R. § 745.89, at the June 1, 2016 renovation described in paragraph 32, and did not qualify for an exemption under 40 C.F.R. § 745.82(a) or (b).

42. Respondent's failure to be certified as a firm, under 40 C.F.R. § 745.89, before performing the June 1, 2016 renovation referred to in paragraph 32, constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and 15 U.S.C. § 2689.

Count II – Failure to Assign a Certified Renovator

43. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

44. 40 C.F.R. § 745.89(d)(2) requires that firms must assign a certified renovator to each renovation performed by the firm and discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

45. Respondent failed to ensure that a certified renovator was assigned to the renovation work performed by the firm on June 1, 2016 described in paragraph 32, and did not discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

46. Respondent's failure to ensure that a certified renovator conducted the renovation work performed by the firm on June 1, 2016, as described in paragraph 32, constitutes a violation of 40 C.F.R. § 745.89(d)(2) and 15 U.S.C. 2689.

Civil Penalty

47. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$900. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations

alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

48. Within 30 days after the effective date of this CAFO, Respondent must pay the \$900 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The cashier's check or certified check must note the following: the case title ("In the Matter of Leonard Oaks, LLC") and the docket number of this CAFO.

49. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 48. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Christina Saldivar (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Gillian Asque (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

50. This civil penalty is not deductible for federal tax purposes.

51. If Respondent does not timely pay the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

52. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

53. Consistent with the “Standing Order Authorizing E-mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: asque.gillian@epa.gov (for Complainant), and tbahta@sbcglobal.net (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

54. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

57. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

58. The terms of this CAFO bind Respondent and its successors and assigns.

59. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorney's fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

62. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

In the Matter of Leonard Oaks, LLC
Docket No. TSCA-05-2018-0007

Leonard Oaks, LLC, Respondent

5-30-18
Date

Tewelde Bahta
Tewelde Bahta
Owner/Member
Leonard Oaks, LLC

United States Environmental Protection Agency, Complainant

6/8/2018
Date

Michael D. Harris
Michael D. Harris
Acting Director
Land and Chemicals Division

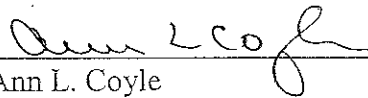
In the Matter of Leonard Oaks, LLC
Docket No. TSCA-05-2018-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

June 12, 2018

Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the Matter of: Leonard Oaks, LLC
Docket Number: TSCA-05-2018-0007

CERTIFICATE OF SERVICE

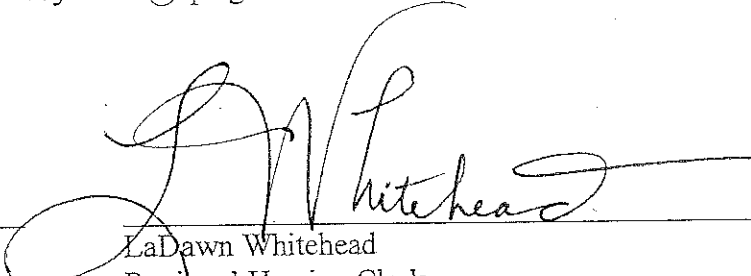
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 12, 2018, this day in the following manner to the addressees:

Copy by E-mail to Respondent: Mr. Tewelde Bahta
tbahta@sbcglobal.net

Copy by e-mail to
Attorney of Complainant: Gillian Asque
asque.gillian@epa.gov

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: June 12, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5