

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2

2014 JUL 17 PM 3: 26

REGIONAL HEARING  
CLERK

-----X  
: In the Matter of :  
: :  
: **Alstar Construction, Inc.,** :  
: :  
: Respondent. :  
: :  
: Proceeding under Section 16(a) of :  
: the Toxic Substances Control Act. :  
: :  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2014-9171

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. Section 22.13(b) that 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 ("CA/FO") pursuant to 40 C.F.R. Section 22.18(b)(2) and (3).

On January 30, 2013, the United States Environmental Protection Agency, Region 2 ("EPA"), issued an "Opportunity to Show Cause to EPA for Potential Violations of the Toxic

Substances Control Act" ("SCL") to Alstar Construction, Inc. ("Respondent"). The SCL alleged that Respondent may have violated the regulations promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, set forth at 40 C.F.R. Part 745, Subpart E, relating to EPA's lead-based paint ("LBP") Renovation, Repair and Painting ("RRP") Rule.

EPA and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this case without further litigation.

#### FINDINGS OF FACT

1. Respondent is Alstar Construction, Inc.
2. Respondent's primary place of business is located at 1108 Crescent Court, Toms River, New Jersey 08753.
3. On or about April 18, 2012, duly designated representatives of the EPA conducted an inspection of Respondent's renovation activities at a single-family house located at 651 Fort Plains Road in Howell, New Jersey 07731.
4. The inspection referenced in paragraph "3" above, is hereinafter referred to as "the Inspection".
5. As a result of the Inspection, EPA determined that Respondent, as a firm performing renovations during 2012, had failed to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with 40 C.F.R. §745.89(a); (2) obtain, from the owner, a written acknowledgement that the owner had received the "pamphlet" (as that term is defined in §745.83) which contains information regarding the hazards of lead in accordance with 40 C.F.R. §745.84(a)(2)(i); (3) post signs clearly defining the work area in accordance with 40 C.F.R. §745.85(a)(1); (4) contain waste from renovation activities to prevent

releases of dust and debris in accordance with 40 C.F.R. §745.85(a)(4)(i); (5) store waste under containment at the conclusion of the workday in accordance with 40 C.F.R. §745.85(a)(4)(ii); (6) retain required renovation records in accordance with 40 C.F.R. §745.86(b); and (7) ensure that a renovator was assigned to the renovation in accordance with 40 C.F.R. §745.89(d)(2), pursuant to 40 C.F.R. §745.81(a)(3).

6. On February 20, 2013, the parties met for an informal settlement conference.

### CONCLUSIONS OF LAW

1. Respondent, as a firm that engages in renovations which may involve lead-based paint, is subject to the regulations and requirements pertaining to LBP promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E.

2. The failures during 2012 to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with 40 C.F.R. §745.89(a); (2) obtain, from the owner, a written acknowledgement that the owner has received the “pamphlet” (as that term is defined in 40 C.F.R. §745.83) which contains information regarding the hazards of lead in accordance with 40 C.F.R. §745.84(a)(2)(i); (3) post signs clearly defining the work area in accordance with 40 C.F.R. §745.85(a)(1); (4) contain waste from renovation activities to prevent releases of dust and debris in accordance with 40 C.F.R. §745.85(a)(4)(i); (5) store waste under containment at the conclusion of the workday in accordance with 40 C.F.R. §745.85(a)(4)(ii); (6) retain required renovation records in accordance with 40 C.F.R. §745.86(b); and (7) ensure that a renovator was assigned to the renovation in accordance with 40 C.F.R. §745.89(d)(2), pursuant to 40 C.F.R. §745.81(a)(3), are violations under Sections 15 and 409 of TSCA, 15 U.S.C. § 2614 and § 2689.

## TERMS OF 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 comply with all applicable provisions of 40 C.F.R. Part 745, Subpart E.
2. 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 alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual determinations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the determinations set forth in the "Conclusions of Law" section, above.
3. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by the Respondent. By such representative's signature to this Consent Agreement, Respondent certifies that the information submitted to EPA regarding Respondent's ability to pay is accurate and not misleading.
4. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** to the "Treasurer of the United States of America". Each check shall be identified with a notation of the name and

docket number of this case, set forth in the caption on the first page of this document. Each check shall be mailed to:

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

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street,  
New York, NY 10045**
- 3) Account: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read  
**"D 68010727 Environmental Protection Agency"**
- 6) **Alstar Construction, Inc.**
- 7) Docket Number TSCA-02-2014-9171

Payment must be received at the above address (or account of EPA) in accordance with the following schedule:

The first payment amount of \$500.00 shall be owing and due on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (each of the dates by which each of the payments must be received shall hereinafter be referred to as the "due date"). The second payment amount of \$500.00 shall be owing and due on or before 90 calendar days after the date of the signature of the Final Order at the end of this document. The third and final payment amount of \$500.00 shall be owing and due on or before 135 calendar days after the date of the signature of the Final Order at the end of this document. Promptly after payments

have been made, Respondent shall send copies of these payments or furnish reasonable proof that such payments have been made to both:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

And

Meghan Tierney, Lead Team  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-225  
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if any payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

5 This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims described in Paragraph "5" of the "Findings of Fact" and paragraph "2" of the "Conclusions of Law" set forth above. Nothing herein shall be read to preclude EPA or the

United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. 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.

7. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the determinations contained in the "Findings of Fact" section and the "Conclusions of Law" section, above. Respondent further waives its right otherwise to contest all such determinations.

8. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

9. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

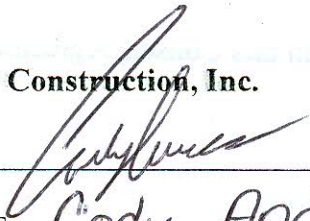
10. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

11. Each party shall bear its own costs and fees in this matter.

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

RESPONDENT:

**Alstar Construction, Inc.**


BY: 

NAME: Cody Andrews  
(PLEASE PRINT)

TITLE: Owner

DATE: 6/30/14

COMPLAINANT:

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

DATE: JULY 15, 2014



In the Matter of Alstar Construction, Inc.  
Docket Number TSCA-02-2014-9171

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Alstar Construction, Inc., bearing Docket Number TSCA-02-2014-9171. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA (40 C.F.R. § 22.31(b)). 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.

DATE: July 16, 2014

Helen S. Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

In the Matter of Alstar Construction, Inc.  
Docket Number TSCA-02-2014-9171

### CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-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. EPA- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Al Andrews  
Alstar Construction, Inc.  
1108 Crescent Court  
Toms River, New Jersey 08753

Duraplex, Inc  
1681 Route 88 West  
Brick, NJ 08724

Attention:  
Mr. Cody Andrews  
Mr. Albert Andrews  
Alstar Construction, Inc

Dated: July 17, 2014  
New York, New York

Lynn Khoury