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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

2017 MAR 15 PM 1:47

REGIONAL HEARING OFFICE
EPA REGION III PHILA. PA

In the Matter of:)

Alex Properties, Inc.)

1819 Pulaski Road)

New Castle, PA 16105)

a/d/b/a)

Alex Restoration and Masonry Repairs)

RESPONDENT.)

Docket No.: TSCA-03-2017-0113

Proceeding Under Section 16(a) of the
Toxic Substances Control Act, 15
U.S.C. §§ 2615(a) and 2689

CONSENT AGREEMENT

This Consent Agreement is entered into by the Acting Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Alex Properties, Inc. (“Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, 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 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure, during the performance of a renovation for compensation on certain pre-1978 housing, to comply with the Lead Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth and codified by EPA at 40 C.F.R. Part 745, Subpart E.
2. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."
5. Except as provided in Paragraph 4, immediately above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. 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 CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .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.
11. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding *Subchapter IV – Lead Exposure Reduction*, TSCA Section 401 to 412, 15 U.S.C. §§ 2681 to 2692.
12. Section 402(c) of TSCA, 15 U.S.C § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings.
13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.
14. Under the RRP Rule, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and or painting activities in target housing and or child-occupied facilities or must be employed by an EPA-certified renovation firm.

15. 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.”
16. 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.”
17. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, 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.”
18. Respondent, a/d/b/a Alex Restoration and Masonry Repairs, is a Pennsylvania corporation that specializes in general renovation and masonry repair work on commercial and residential properties in western Pennsylvania. Respondent does business from an office located at 1819 Pulaski Road, New Castle, PA 16105.
19. Mr. Shanan John Lucas, the owner of a sole proprietorship that is registered to do business in the Commonwealth of Pennsylvania under the fictitious name of S. Lucas Paints (hereinafter, “SLP”), operates as an exterior paint and paint removal contractor, specializing in power washing and in the interior and exterior spray painting and brush painting of commercial and residential properties in western Pennsylvania. SLP does business from an office located at 601 1st Avenue, Ellwood City, PA 16117.
20. Respondent and SLP were each, at all times relevant to the violations alleged in this Consent Agreement, a “person” and a “firm,” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83, at a residential property located at 851 Beech Avenue, Pittsburgh, Pennsylvania from on or about March 20, 2015 through on or about March 29, 2015.
21. The single-family residential home located at 851 Beech Avenue, Pittsburgh, Pennsylvania, referred to in Paragraph 20, immediately above, was constructed prior to 1978 and is “target housing” as that term is defined at 40 C.F.R. § 745.103.
22. On or about September 18, 2014, Respondent entered into a written contract with the co-owner of the single-family residential home located at 851 Beech Avenue, Pittsburgh, Pennsylvania (hereinafter, “Target Housing Property”) for the purpose of performing a “renovation for compensation,” pursuant to 40 C.F.R. § 745.82(a), at the Target Housing Property.
23. On or about May 20, 2015, Respondent accepted a September 10, 2014 written bid proposal from SLP and thereby entered into a written contract with SLP pursuant to which Respondent employed SLP, as its subcontractor, to remove a substantial amount of exterior paint from the left and rear exterior surface areas of the Target Housing Property and to thereby perform a “renovation for compensation,” pursuant to 40 C.F.R. § 745.82(a), at the Target Housing Property.

24. The “renovation performed for compensation” by Respondent, through SLP, at the Target Housing Property did not involve a renovation in any target housing or in any 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 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).
25. On June 1, 2015, EPA received a complaint from a co-owner of the Target Housing Property (hereinafter “Complaining Party”). The Complaining Party complained of alleged RRP Rule work practice failures on the part of SLP who, according to the Complaining Party, performed work at the Target Housing Property under subcontract with Respondent, in accordance with the facts previously alleged in Paragraph 23, above.
26. On June 5, 2015, an EPA Inspector visited the Target Housing Property to perform a site inspection, take photographs, interview the Target Housing Property residents and gather relevant information.
27. On October 1, 2015, an EPA Inspector interviewed representatives of the Respondent and the owner of SLP and conducted an inspection of their respective business records (hereinafter “Records Review”), to further determine Respondent’s and SLP’s levels of compliance with the RRP Rule in regards to certain renovation activities performed by the Respondent at the Target Housing Property.

V. VIOLATIONS ALLEGED

COUNT I

Performing Target Housing Renovation for Compensation Without First Obtaining Required Firm Certification

28. The allegations contained in Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
29. Pursuant to 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(a) or (c).

30. From on or about March 20, 2015 through on or about March 29, 2015, Respondent and its subcontractor, SLP, performed a renovation at the Target Housing Property, which did not qualify for any of the exceptions identified in 40 C.F.R. § 745.82(a) or (c), respectively, without either of them first having obtained initial lead-safe firm certification pursuant to the requirements and provisions set forth at 40 C.F.R. § 745.89.
31. Respondent's performance of a target housing renovation, after April 22, 2010, without first obtaining the required initial lead-safe firm certification from EPA pursuant to 40 C.F.R. § 745.89 requirements, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.81(a)(2)(ii).
32. The Respondent's failure to comply with an applicable 40 C.F.R. § 745.81(a)(2)(ii) RRP Rule requirement by its performance of the above-described Target Housing Property renovation, after April 22, 2010 and without first having obtaining a required 40 C.F.R. § 745.89 initial lead-safe firm certification from EPA, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT II

Failing to Obtain Timely Written Acknowledgment of Target Housing Owner's Receipt of EPA-Approved Lead Hazard Information Pamphlet

33. The allegations contained in Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
34. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm performing a renovation in any residential dwelling unit of target housing must provide the owner of the unit with the EPA-approved lead hazard information pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*" within 60 days before beginning renovation activities and either: (i) obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or (ii) obtain a certificate of mailing at least 7 days prior to the renovation.
35. On October 1, 2015, an EPA Inspector conducted a Records Review of the respective business records maintained by the Respondent and by SLP with respect to the renovation activities performed by each of them at the Target Housing Property.
36. Neither the Respondent nor SLP could provide to EPA, at the time of the October 1, 2015 EPA Records Review of their business records or at any time thereafter, any written documentation which acknowledged that either of the Target Housing Property co-owners had received the required EPA-approved lead hazard information pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*" from Respondent or from its subcontractor, SLP, at any time before, during or after they performed a renovation at the Target housing property from on or about March 20, 2015 through on or about March 29, 2015.

37. Respondent's failure to obtain from either Target Housing Property co-owner a written acknowledgment that either of them timely received the required EPA-approved lead hazard information pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*" constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.84(a)(i).
38. The Respondent's failure to comply with an applicable 40 C.F.R. § 745.81(a)(1)(i) RRP Rule requirement by its failure to obtain from either Target Housing Property co-owner a written acknowledgment that either of them timely received the required EPA-approved lead hazard information pamphlet, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT III

Failing to Post Required Warning Signs

39. The allegations contained in Paragraphs 1 through 38 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
40. 40 C.F.R. § 745.85(a)(1) provides that "[f]irms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section."
41. During the course of the October 1, 2015 EPA Records Review, the EPA Inspector was told by SLP's owner that, during the course of the March 20, 2015 through March 29, 2015 Target Housing Property renovation, caution tape was used to define the work area, but no one had posted required lead work warning signs to warn occupants and other persons not involved in renovation activities to remain outside of the work area during the time that Target Housing Property renovation work was in progress.
42. Respondent's failure to post required lead work warning signs, to warn occupants and other persons not involved in renovation activities to remain outside of the work area during the entire course of the renovation and post-renovation cleaning verification activities conducted by Respondent at the Target Housing Property, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.85(a)(1).
43. The Respondent's failure to comply with an applicable 40 C.F.R. § 745.85(a)(1) RRP Rule requirement through its failure to post required lead work warning signs designed to warn occupants and other persons not involved in the Target Housing Property renovation to remain outside of the work area during the entire course of the renovation and post-renovation cleaning verification activities had been completed, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT IV

*Failing to Make Available to EPA
Required Documentation of Respondent's Compliance With
the Requirements of Each Applicable Work Practice Standard*

44. The allegations contained in Paragraphs 1 through 43 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
45. Pursuant to 40 C.F.R. § 745.86(a), 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.
46. 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), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
47. At the time of the October 1, 2015 EPA Records Review, neither Respondent nor SLP had any records available to document whether a certified renovator performed, or directed workers to perform, the tasks required by 40 C.F.R. § 745.85(a), or to document whether Respondent followed the post-renovation cleaning verification standards described in 40 C.F.R. § 745.85(b), during the course of the March 20, 2015 through March 29, 2015 Target Housing Property renovation.
48. Respondent's failure to retain and provide to EPA, upon request, records that Respondent is required to maintain in order to document its 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) and followed the post-renovation cleaning verification standards described in 40 C.F.R. § 745.85(b), during the course of the Target Housing Property renovation performed on or about March 20, 2015 through March 29, 2015 constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.86(b)(6).
49. Respondent's failure to comply with an applicable 40 C.F.R. § 745.86(a)(6) RRP Rule requirement through its failure to retain and provide to EPA, upon request, those records required to document compliance with the work practice standards of 40 C.F.R. § 745.85, during the course of the Target Housing Property renovation, as described in the preceding paragraph, constitutes a violation of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

VI. CIVIL PENALTY

50. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable

immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty of \$5,000.00 within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

51. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the 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")*, dated August 2010. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.
52. Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, it is the understanding of the Parties that the Respondent will pay the entire penalty over a 180 day period, with an initial civil penalty installment of \$1,000.00 due within 30 days of Respondent's receipt of a true and correct copy of this CAFO and the remaining \$4,000.00 civil penalty balance to be paid in five (5) subsequent installments, with interest at the rate of 1% per annum on the outstanding principal balance, according to the following schedule:
- 1st payment** - due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$1,000.00**;
- 2nd payment** - due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$806.66**;
- 3rd payment** - due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$808.00**;
- 4th payment** - due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$808.00**;
- 5th payment** - due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$806.66**; and
- 6th payment** - due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = **\$804.00**.

Pursuant to this payment schedule, the Respondent will pay the full civil penalty of \$5,000.00, plus accrued interest of \$33.32, as further outlined in the chart below:

| Payment No. | Payment Due # of Days after Effective Date of Consent Agreement | Payment Due | | Payment Amount Due |
|--------------------|--|--------------------|-----------------|---------------------------|
| | | Principal | Interest | |
| 1 | 30 Days | \$1,000.00 | \$0.00 | \$ 1,000.00 |
| 2 | 60 Days | \$ 800.00 | \$6.66 | \$806.66 |
| 3 | 90 Days | \$ 800.00 | \$8.00 | \$808.00 |
| 4 | 120 Days | \$ 800.00 | \$8.00 | \$808.00 |
| 5 | 150 Days | \$ 800.00 | \$6.66 | \$806.66 |
| 6 | 180 Days | \$ 800.00 | \$4.00 | \$804.00 |
| | Total = | \$ 5,000.00 | \$33.32 | \$5,033.32 |

53. Payment of each civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2017-0113;
 - b. All checks shall be made payable to "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

Primary Contact: Craig Steffen, 513-487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

54. Respondent may also pay the civil penalty amount in Paragraph 50 above, including applicable accrued interest set forth in paragraph 52 above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

55. A copy of each check issued by, and/or of each electronic transfer payment made by, the Respondent shall be sent simultaneously to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

56. 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 or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
57. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash 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.
58. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which 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).

59. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

60. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 16 of TSCA, 15 U.S.C. § 2615, for the specific violations alleged in Section V (“Violations Alleged”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

61. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

62. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of TSCA and 40 C.F.R. Part 745.

X. RESERVATION OF RIGHTS

63. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. 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. In addition, 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). Further, EPA reserves any rights and remedies available to it under TSCA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

64. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent’s successors, agents and assigns.

XII. EFFECTIVE DATE

65. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial

Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

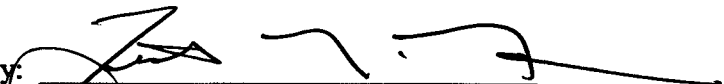
66. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

67. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.


For Respondent:

Date: 2-21-17

By: 
Mr. Lester M. Meiter, President
Alex Properties, Inc.

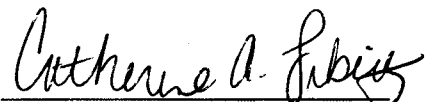
For Complainant:

Date: 2/28/2017

By: 
A.J. D'Angelo
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 3-7-17

By: 
Catherine A. Libertz, Acting Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2017 MAR 15 PM 1:47

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING OFFICE
REGION III, PHILA., PA

| | | |
|---|---|--|
| In the Matter of: |) | |
| |) | |
| Alex Properties, Inc. |) | |
| 1819 Pulaski Road |) | |
| New Castle, PA 16105 |) | Docket No.: TSCA-03-2017-0113 |
| |) | |
| a/d/b/a |) | |
| Alex Restoration and Masonry Repairs |) | Proceeding Under Section 16(a) of the |
| |) | Toxic Substances Control Act, 15 |
| RESPONDENT. |) | U.S.C. §§ 2615(a) and 2689 |

FINAL ORDER

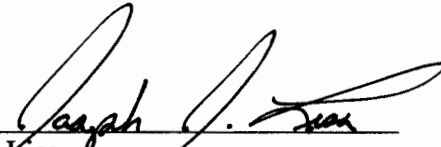
Complainant, the Acting Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Alex Properties, Inc., a/d/b/a Alex Restoration and Masonry Repairs, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with 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, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

WHEREFORE, pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, with respect to violations of the Residential Property Renovation requirements of 40 C.F.R. Part 745, Subpart E, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon a consideration of, *inter alia*: the statutory penalty factors set forth in

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B); 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")*, dated August 2010; and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Five Thousand Dollars (\$5,000.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or his designee, the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: March 15, 2017



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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


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|---|---|--|
| In the Matter of: |) | |
| |) | |
| Alex Properties, Inc. |) | |
| 1819 Pulaski Road |) | |
| New Castle, PA 16105 |) | Docket No.: TSCA-03-2017-0113 |
| |) | |
| a/d/b/a |) | |
| Alex Restoration and Masonry Repairs |) | Proceeding Under Section 16(a) of the |
| |) | Toxic Substances Control Act, 15 |
| RESPONDENT. |) | U.S.C. §§ 2615(a) and 2689 |

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order (collectively, "CAFO"). I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7001 2510 0001 1042 9207), to the following person at the following address:

Mr. Lester M. Meiter
President
Alex Properties, Inc.
1819 Pulaski Road
New Castle, PA 16105

March 15, 2017
Date


A.J. D'Angelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
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Philadelphia, PA 19103-2029
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