

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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In the Matter of :  
:  
**Baxter Construction, Inc.,** :  
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:  
:  
Respondent :  
:  
:  
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act :  
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CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2018-9168

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U.S. Environmental  
Protection Agency  
Region 2  
New York, NY

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 Baxter Construction, Inc. (“Respondent”).
2. Respondent’s primary place of business is located at 31 West Broad Street, Hopewell, NJ 08525.
3. Respondent is engaged in the business of residential renovation and construction, including window replacement.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83, with EPA Firm Certification No. NAT—49288-2, valid from August 26, 2016 to September 9, 2021.
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, including Residential Property Renovation at 40 C.F.R. Part 745, Subpart E [the “Renovation, Repair and Painting (“RRP”)”] Rule.
6. The RRP Rule was promulgated to ensure that renovation activities in target housing<sup>1</sup> 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 environments.

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<sup>1</sup> “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.

7. 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 of 40 C.F.R. Part 745, Subpart E, 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/cm<sup>2</sup>) or 0.5% by weight as described at 40 C.F.R. § 745.82, or (2) the renovation is, itself, a minor repair and maintenance activity as defined at 40 C.F.R. § 745.83.

8. On August 17, 2016, the United States Environmental Protection Agency, Region 2 (“EPA”), attempted to conduct a RRP Rule compliance inspection at Respondent’s primary place of business. On January 26, 2017, Respondent met with EPA at EPA’s offices in Edison, New Jersey. During the meeting, Respondent provided information including documents regarding its compliance efforts.

9. Based on the information provided by Respondent, EPA determined that Respondent had performed renovations subject to the RRP Rule at the following addresses from 2015 to 2017:

300 Pretty Brook Road, Princeton, NJ 08540  
47 S. Main Street, Cranbury, NJ 08512  
25 Cleveland Road, Princeton, NJ 08540  
53 Battle Road, Princeton, NJ 08540  
29 Cleveland Road, Princeton, NJ 08540

10. EPA further alleges that at each of the above-listed addresses, Respondent:

- a. performed renovations subject to the RRP Rule without obtaining initial firm certification from EPA, as required by 40 C.F.R. § 745.81(a)(2)(ii);
- b. failed to establish and maintain records of compliance for the renovation conducted, as required by 40 C.F.R. § 745.87(b);

- c. failed to assign a certified renovator to the renovation conducted, as required by 40 C.F.R. § 745.89(d)(2);
- d. failed to provide the owner of each property renovated with the EPA-approved Lead Hazard pamphlet as required by 40 C.F. R § 745.84(a)(1); and
- e. failed to post signs clearly defining the work area and warning of potential lead hazards as required by 40 C. F. R. § 745.85(a)(1)

11. It is unlawful under Section 409 of TSCA, 15 U.S.C. Section 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.

12. 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).

13. Pursuant to Section 16(a) of TSCA, 15 U.S.C. Section 2615(a), a violator may be subject to civil penalties up to \$38,114 per violation per day for each violation committed after November 2, 2015, for which a penalty is assessed on or after January 15, 2017.

14. Respondent submitted financial information and documentation to EPA regarding Respondent's financial condition with respect to its ability to pay a penalty in settlement of 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:

- a. The financial information and documentation it submitted to EPA regarding Respondent's financial condition is accurate, complete, and not misleading. Respondent understands that EPA has relied on the accuracy of the 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; and
- b. Respondent has requested of EPA that payment of the civil penalty be in installments because of the financial condition of Respondent, *viz.* a one-time payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent.

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 **NINETY-FIVE THOUSAND EIGHT HUNDRED EIGHTY-THREE DOLLARS (\$95,883.00)** in accordance with the payment terms and

schedule set forth in Paragraph 7(a) through (e) below and according to one of the payment transmittal methods in subparagraph a or b below.

- a. If payment is made by check, then each 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

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

Each check shall be identified with a notation thereon listing the following: In the Matter of Baxter Construction, Inc., and shall bear the Docket No. TSCA-02-2018-9168.

- b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each 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: Baxter Construction, Inc.; and
- 7) Case Docket Number **TSCA-02-2018-9168.**

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. 40 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.

7. The civil penalty of \$95,883, set forth in paragraph 5, above, shall be paid in SEVEN installments, with applicable interest at the rate of one percent (1%) per annum on the outstanding principal balance, as described immediately below (total interest payments to equal Five Hundred and Sixty One Dollars and Fifteen Cents (\$561.15), equaling a total payment (principal plus interest) of \$96,444.15.

a. 1<sup>st</sup> Payment: The first payment, in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), consisting of a principal payment of \$25,000 and an interest payment of \$0.00, shall be paid within thirty (30) calendar days of the date on which the Regional Administrator signs the Final Order.

b. 2<sup>nd</sup> Payment: The second payment, in the amount of ELEVEN THOUSAND NINE HUNDRED THIRTY-ONE DOLLARS AND NINETY-EIGHT CENTS (\$11,931.98), consisting of a principal payment of \$11,813.84 and an interest payment of \$118.14, shall be paid on or before 90 calendar days from the date on which the Regional Administrator signs the Final Order.

c. 3<sup>rd</sup> Payment: The third payment, in the amount of ELEVEN THOUSAND NINE HUNDRED SIXTY-ONE DOLLARS AND FIFTY-ONE CENTS (\$11,961.51),

consisting of a principal payment of \$11,813.84 and an interest payment of \$147.67, shall be paid on or before 180 calendar days from the date on which the Regional Administrator signs the Final Order.

d. 4<sup>th</sup> Payment: The fourth payment, in the amount of ELEVEN THOUSAND NINE HUNDRED THIRTY-ONE DOLLARS AND NINETY-EIGHT CENTS (\$11,931.98) (\$11,931.98), consisting of a principal payment of \$11,813.84 and an interest payment of \$118.14, shall be paid on or before 270 calendar days from the date on which the Regional Administrator signs the Final Order.

e. 5<sup>th</sup> Payment: The fifth payment, in the amount of ELEVEN THOUSAND NINE HUNDRED TWO DOLLARS AND FORTY-FOUR CENTS (\$11,902.44), consisting of a principal payment of \$11,813.84 and an interest payment of \$88.60, shall be paid on or before the one-year (e.g., 12 month) anniversary from the date on which the Regional Administrator signs the Final Order.

f. 6<sup>th</sup> Payment: The sixth payment, in the amount of ELEVEN THOUSAND EIGHT HUNDRED SEVENTY-TWO DOLLARS AND NINETY-ONE CENTS (\$11,872.91), consisting of a principal payment of \$11,813.84 and an interest payment of \$59.07, shall be paid on or before 450 calendar days from the date on which the Regional Administrator signs the Final Order.

g. 7<sup>th</sup> Payment: The seventh payment, in the amount of ELEVEN THOUSAND EIGHT HUNDRED FORTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$11,843.33), consisting of a principal payment of \$11,813.80 and an interest payment of \$29.53, shall be paid on or before 540 calendar days from the date on which the Regional Administrator signs the Final Order.



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. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in paragraph 7 above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late penalty charges described in Paragraph 9 and 10 below, in the event of any such failure or default and remit such payment in accordance with the payment instructions in paragraph 5 above.

9. 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.

10. 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).

11. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

12. 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.

13. The civil penalty and any stipulated penalty 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.

14. Any responses, documentation, and communication submitted in connection with this Consent Agreement shall be sent to:

Theresa Bourbon  
Enforcement Officer  
Pesticides and Toxic Substances Branch – Lead Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
2890 Woodbridge Avenue – MS 225  
Edison, New Jersey 08837

and

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

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

James Baxter  
Baxter Construction, Inc.  
31 West Broad Street  
Hopewell, New Jersey 08525

15. 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 the Findings of Fact and Conclusions of Law set forth above.

16. Full payment of the penalty described in paragraph 5, above, shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 10 (a) through (e) 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.

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

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

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

20. 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.

21. 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 this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

22. 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.

23. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

24. 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.

25. 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.

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

27. 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 Baxter Construction, Inc.  
Docket Number TSCA-02-2018-9168

**Baxter Construction, Inc.**

RESPONDENT: BY: James E. Baxter  
(SIGNATURE)

NAME: JAMES BAXTER  
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 9-25-18


COMPLAINANT:

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

DATE: \_\_\_\_\_

In the Matter of Baxter Construction, Inc.  
Docket Number TSCA-02-2018-9168

COMPLAINANT:

  
\_\_\_\_\_

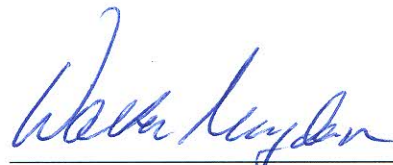
for Dore LaPosta, Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 9/26/18 \_\_\_\_\_

In the Matter of Baxter Construction, Inc.  
Docket Number TSCA-02-2018-9168

### 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 Baxter Construction, Inc., Docket Number TSCA-02-2018-9168. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. 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)). 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.

  
for \_\_\_\_\_  
Peter D. Lopez  
Regional Administrator  
U.S. Environmental Protection Agency –  
Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007-1866

Date: Sept. 27, 2018





In the Matter of Baxter Construction, Inc.  
Docket Number TSCA-02-2018-9168

### 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. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

James Baxter  
Baxter Construction, Inc.  
31 West Broad Street  
Hopewell, New Jersey 08525

Daniel A. Greenhouse, Esq.  
Cullen and Dykman, LLP  
229 Nassau Street  
Princeton, New Jersey 08542

Dated.

Oct 2, 2018

New York, New York



