

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**



In the Matter of:)	
)	EPA Docket No.
WestFair Painting Corporation dba)	
CertaPro Painters of Fairfield)	TSCA-01-2024-0012
14 Goodhill Road)	
Bethel, Connecticut 06801)	CONSENT AGREEMENT
)	AND
Respondent.)	FINAL ORDER
)	
<i>Proceeding under Section 16(a) of the</i>)	
<i>Toxic Substances Control Act,</i>)	
<i>15 U.S.C. § 2615(a).</i>)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (“EPA”), Region 1 (“Complainant”) alleges that WestFair Painting Corp. dba CertaPro Painters of Fairfield CT (“Respondent”) violated Sections 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and federal regulations promulgated thereunder set forth at 40 C.F.R. Part 745, Subpart E, as amended (the “Renovation, Repair and Painting Rule” or “RRP Rule”).

This Consent Agreement and Final Order (“CAFO”) simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), at 40 C.F.R. Part 22. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

I. STATUTORY AND REGULATORY AUTHORITY

1. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act

(the “Act”) in response to findings that “pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint” and that dust from this lead paint creates significant health problems for children. 45 U.S.C. § 4851. The Act added a new section to TSCA entitled *Subchapter IV – Lead Exposure Reduction* (TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692) to, among other purposes, ensure that “the existence of lead-based paint hazards is taken into account in... [the] renovation of homes and apartments.” 42 U.S.C. § 4851a (4).

2. In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA (*Lead Hazard Information Pamphlet – Renovation of Target Housing*), 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule”).

3. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA (*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*), 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the Lead-Based Paint Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.” *See* 40 C.F.R. §§ 745.80-745.91, 745.220. As further described below, the RRP Rule sets forth procedures and requirements for, among other things, renovator and renovator firm certifications, records retention, and work practices for renovation, repair, and painting activities in “target housing” and child-occupied facilities, and the establishment and retention of records to document compliance.

4. “Target housing” is “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).” 15 U.S.C. § 2681(17).

5. A “renovator” is “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.” 40 C.F.R. § 745.83.

6. A “firm” is 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.” 40 C.F.R. § 745.83.

7. “Renovation” is “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 CFR § 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, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.” 40 C.F.R. § 745.83.

8. “Minor repair and maintenance activities” means “activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition

of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.” 40 C.F.R. § 745.83.

9. Except in specific circumstances not relevant to Respondent or the violations alleged in this CAFO, firms renovating target housing for compensation must, among other requirements:

- i. Provide the owner of the unit being renovated with a lead paint informational pamphlet;
- ii. Assign a certified renovator to each renovation of target housing;
- iii. Ensure that firms performing renovations received certification from EPA;
- iv. Retain all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation activities.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(1), 745.89(d)(1)-(2), (4), and 745.86(a).

10. It is unlawful for any person to fail to comply with these or any other rules issued under Subchapter IV of TSCA. 15 U.S.C § 2689. *See also* 40 C.F.R. §§ 745.87(a), (b).

11. TSCA Section 16(a) authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA. *See also* 40 C.F.R. § 745.87(d). This amount was amended by the Debt Collection Improvement Act of 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 (“FCPIAA”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and the FCPIAA’s implementing regulations, promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 88 Fed. Reg. 89,309

(Dec. 27, 2023)), which together authorize the assessment of civil administrative penalties of up to \$46,989 for violations that occur after November 2, 2015, for which a penalty is assessed on or after January 24, 2024.

II. GENERAL ALLEGATIONS

12. Respondent is a corporation registered with the State of Connecticut in or around 2021, with its principal office located at 14 Goodhill Road, Bethel, Connecticut. Respondent performs or hires subcontractors to perform residential painting services in Connecticut.

13. Thus, Respondent is a “firm,” as defined by 40 C.F.R. § 745.83, and a “person” as defined by the same.

14. At all times relevant to the violations alleged in this CAFO, Respondent hired subcontractors to perform renovation activities in calendar year 2022 that constituted “renovations” within the meaning of 40 C.F.R. § 745.83. Respondent was most recently certified by EPA as a firm on February 10, 2022.

15. Respondent performed “renovations for compensation” within the meaning of 40 C.F.R. § 745.83.

16. On March 7, 2023, EPA conducted an inspection to evaluate Respondent’s compliance with the RRP Rule.

17. At times relevant to the allegations in this CAFO, Respondent hired subcontractors to perform five renovations in target housing during calendar year 2022. The subcontractors listed below performed the renovations at the addresses also listed without having obtained firm certification:

- i. A property located at 1 Highland Road, Westport, Connecticut, built in 1957, had exterior work done by Wilmar dos Santos, a subcontractor of Respondent, on

July 13, 2022. This work included painting exterior trim and siding and adding posts and a railing.

- ii. A property located at 275 Lakeside Drive, Fairfield, Connecticut, built in 1951, had exterior work done by Lincoln Barbosa of Construal Home Improvement, LLC, a subcontractor of Respondent, on October 21, 2022. This work included exterior painting.
- iii. A property located at 658 Hoyden's Hill Rd, Fairfield, Connecticut, built in 1859, had exterior work done by Jesus Builes, a subcontractor of Respondent, on August 29, 2022. This work included painting and staining exterior siding.
- iv. A property located at 32 Lu Manor Drive, Fairfield, Connecticut, built in 1955, had work done by Lester Avilez-Rocha of L.A.R. Painting, LLC, a subcontractor of Respondent, on February 10, 2022. This work included refinishing eleven doors.
- v. A property located at 233 Compo Road South, Westport, Connecticut, built in 1951, had exterior work done by Juan Luis Portilla of Portilla Sons Painting, LLC, a subcontractor of Respondent, on August 5, 2022. This work included painting exterior siding, trim, and windows.

18. The renovations described in paragraph 17 above did not constitute minor repair or maintenance activities, or emergency repairs. *See* 40 C.F.R. § 745.82(b).

19. The residences listed in paragraph 17 above were built before 1978, and thus, qualify as “target housing.” 15 U.S.C. § 2681(17); 40 C.F.R. § 745.103. The residences do not satisfy the requirements for an exemption from the definition of target housing. *See* 15 U.S.C. § 2681(17); 40 C.F.R. § 745.82.

III. VIOLATIONS

20. EPA has identified the following violations of TSCA and the RRP Rule based on information received in response to EPA's IRL and other information received by EPA.

21. Each of the eighteen violations alleged below is a violation for which penalties may be assessed pursuant to 15 U.S.C. § 2615.

COUNT ONE: FAILURE TO PROVIDE A PAMPHLET

22. Paragraphs 1 through 21, above, are incorporated by reference as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 745.84(a), a firm performing a renovation must, no more than 60 days before beginning renovation activities in target housing, provide the owner of the unit with the *Renovate Right* or EPA-approved pamphlet and obtain a written certification that the owner has received the pamphlet, or obtain a certificate of mailing seven days prior to the renovation. Pursuant to 40 C.F.R. § 745.89(d)(4), firms performing renovations must ensure that the pre-renovation education requirements of § 745.84 have been performed.

24. An inspection of Respondent's business records revealed that Respondent did not provide the *Renovate Right* pamphlet or an EPA-approved pamphlet to the owners of the following four residences at which Respondent performed renovations: 275 Lakeside Drive, Fairfield, CT; 658 Hoyden's Hill Road, Fairfield, CT; 32 Lu Manor Drive, Fairfield, CT; and 233 Compo Road South, Westport, CT.

25. Thus, Respondent failed to provide the required pamphlet to four owners of target housing no more than 60 days before renovations began, in violation of 40 C.F.R. § 745.84(a) and 40 C.F.R. 745.89(d)(4).

COUNT TWO: FAILURE TO CARRY OUT FIRM RESPONSIBILITIES DURING A RENOVATION BY FAILING TO ASSIGN A CERTIFIED RENOVATOR AND TO

ENSURE THAT RENOVATIONS ARE PERFORMED BY CERTIFIED RENOVATORS

26. Paragraphs 1 through 25, above, are incorporated by reference as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 745.81(a)(3), on or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in ¶ 745.82(a) or (c). Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations have the responsibility to ensure that all individuals performing renovations on behalf of a firm are certified renovators, or have been trained by a certified renovator, in accordance with 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.90(b), certified renovators must be physically present at the work site for several steps of the renovation process and must regularly direct work performed by other individuals.

28. Respondent did not assign a certified renovator to four of the properties listed in paragraph 17. Specifically, Respondent did not assign a certified renovator to the renovations at the following properties: 275 Lakeside Drive Fairfield, CT; 658 Hoyden's Hill Road Fairfield, CT; 32 Lu Manor Drive Fairfield, CT; and 233 Compo Road South Westport, CT.

29. Respondent also did not ensure that the renovators performing the renovations for those four properties were certified renovators or were trained by a certified renovator.

30. Thus, on four occasions, Respondent failed to ensure that a certified renovator was assigned to each renovation in violation of 40 C.F.R. § 745.89(d)(2) and failed to ensure that

the renovators performing the renovations were certified or were trained by a certified renovator, in violation of 40 C.F.R. § 745.89(d)(1).

**COUNT THREE: FAILURE TO ENSURE FIRMS PERFORMING RENOVATIONS
RECEIVED CERTIFICATION FROM EPA**

31. Paragraphs 1 through 30, above, are incorporated by reference as if fully set forth herein.

32. Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a)(1), firms performing renovations for compensation must apply to EPA for certification to perform renovations. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in § 745.85. Pursuant to 40 C.F.R. § 745.85(a), renovations must be performed by certified firms.

33. Respondent contracted with the owners of the residences listed in paragraph 17 above, to perform painting and renovation jobs. Respondent then hired subcontractors to perform those renovations. None of the five subcontractors hired by Respondent to perform the renovations listed in paragraph 17 above, were certified firms pursuant to the RRP Rule at the time of the renovations.

34. Thus, Respondent failed to ensure that the five firms that performed the renovations listed in paragraph 17 above, were certified firms at the time of the renovations, in violation of 40 C.F.R. § 745.89(d)(3).

COUNT FOUR: FAILURE TO RETAIN NECESSARY RECORDS

35. Paragraphs 1 through 34, above, are incorporated by reference as if fully set forth

herein.

36. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of the renovation activities. The requirements of the required records are listed in 40 C.F.R. § 745.86(b).

37. The inspection of Respondent's office records revealed that Respondent did not retain the records necessary to demonstrate compliance with the RRP Rule with respect to the following four of the properties listed in paragraph 17: 275 Lakeside Drive Fairfield, CT; 658 Hoyden's Hill Road Fairfield, CT; 32 Lu Manor Drive Fairfield, CT; and 233 Compo Road South Westport, CT.

38. Thus, by failing to retain all necessary records with respect to four renovations, Respondent violated 40 C.F.R. § 745.86(a) and(b).

IV. TERMS OF SETTLEMENT

39. Without admitting or denying the factual allegations in Section III of this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

40. Respondent certifies that it is currently operating and will continue to operate in compliance with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and federal regulations promulgated under TSCA, including 40 C.F.R. Part 745, Subpart E. Specifically, Respondent shall:

- i. Provide the *Renovate Right* pamphlet to the homeowner and obtain a written certification that the owner has received the pamphlet or obtain a certificate of mailing seven days prior to the renovation, in compliance with 40 C.F.R.

§ 745.84(a)(1);

- ii. Ensure that all individuals performing renovation activities on behalf of the firm are certified renovators, or are trained by a certified renovator, in accordance with 40 C.F.R. § 745.90, and that a certified renovator is assigned to each renovation, in compliance with 40 C.F.R. § 745.89(d)(1) and (2).
- iii. Ensure that firms performing renovations obtain firm certification and do not perform renovations or dust sampling without having obtained such certification, in compliance with 40 C.F.R. §§ 745.89(d)(3), 745.85(a) and 745.89(a)(1).
- iv. Retain all records necessary to document Respondent's compliance with the RRP Rule, as described by 40 C.F.R. § 745.86.

41. Respondent shall pay the penalty of \$13,122 within thirty (30) days of the effective date of this CAFO in the following manner: The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of WestFair Painting Corp. dba CertaPro Painters of Fairfield; Consent Agreement and Final Order, EPA Region 1,*" Respondent's name and address, and the EPA Docket Number of this action (TSCA-01-2024-0012), and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Within 24 hours of payment of the penalty, send proof of payment (for example, a copy of the check) by email to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
r1_hearing_clerk_filings@epa.gov

and

Megan Edwards, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
edwards.megan@epa.gov

42. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondent does not fully pay the civil penalty required by this CAFO when due, the unpaid penalty shall be payable with accrued interest from the original due date to the date of payment, with the interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a penalty charge of six

percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

43. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

44. Respondent admits, for the purposes of this proceeding, that Complainant has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states claims upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

45. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

46. The provisions of this CAFO shall be binding on Respondent and Respondent's successors and assigns.

47. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any

criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

48. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

49. Each undersigned representative of the parties to this CAFO certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

50. The parties agree that Respondent and EPA may execute this CAFO by electronic signature. EPA and Respondent acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the Parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form. EPA has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following address: tschultz@certapro.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

51. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Respondent specifically waives any right to recover such costs from

EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

52. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.



Tim Schultz, Owner
WestFair Painting Corp. dba CertaPro Painters of Fairfield

Date: February 16, 2024

For Complainant:

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Dated via electronic signature

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. WestFair Painting Corp. dba CertaPro Painters of Fairfield is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein.

The terms of the Consent Agreement shall become effective on the date that the CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

Dated via electronic signature

LeAnn W. Jensen, Regional Judicial Officer
U.S. EPA, Region 1