



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>**

DOCKET NO.: TSCA-08-2022-0005

IN THE MATTER OF:)	
)	
Capital Roofing & Restoration, Inc.)	FINAL ORDER
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 8th DAY OF APRIL, 2022.

KATHERIN HALL Digitally signed by
 KATHERIN HALL
 Date: 2022.04.08
 14:34:57 -06'00'

Katherin E. Hall
 Regional Judicial Officer

4/4/2022

10:17AM

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Received by
EPA Region VIII
Hearing Clerk

Docket No. TSCA-08-2022-0005

IN THE MATTER OF:)
)
Capital Roofing &)
Restoration, Inc.)
14 Inverness Drive East)
Englewood, Colorado 80112)
)
Respondent.)

CONSENT AGREEMENT

Complainant, the authorized representative of the United States Environmental Protection Agency (EPA), and Respondent, Capital Roofing & Restoration, Inc. (collectively the Parties), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Consent Agreement is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615 and 2689, and the regulations promulgated under TSCA Subchapter IV, set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. “Target housing” means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than six years of age

resides or is expected to reside in such housing) or any zero-bedroom dwelling.
15 U.S.C. § 2681(17).

6. “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 at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. EPA may assess a civil penalty of up to \$43,611 for each violation of section 409. 15 U.S.C. § 2615(a)(1), 40 C.F.R. part 19, 87 Fed. Reg. 1676, 1678 (Jan. 12, 2022).

III. RESPONDENT

8. Respondent is a company doing business in the State of Colorado.
9. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondent is a “firm” as defined by 40 C.F.R. § 745.83.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. On September 13, 2019, an authorized representative of the EPA inspected Respondent’s jobsite at 1319 South Lincoln Street, Denver, Colorado (Jobsite) to determine compliance with the RRP Rule.
12. The jobsite is a residential property constructed prior to 1978 and is “target housing” as the term is defined in 15 U.S.C. § 2681(17).
13. Respondent performed a “renovator,” as the term is defined in 40 C.F.R. § 745.83, and performed or directed demolition, painting, window replacement, and/or framing work at the Jobsite.

Count 1

14. The “initial certification” requirement at 40 C.F.R. § 745.89(a) provides that firms performing renovations on target housing are required to apply to the EPA for certification and obtain that certification.
15. Respondent failed to apply for and obtain initial certification from the EPA prior to performing a renovation on target housing, as required by 40 C.F.R. § 745.89(a).
16. Respondent’s failure to apply for and obtain initial certification constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

17. Firms performing renovations on target housing 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, as required by 40 C.F.R. § 745.89(d)(2).
18. Respondent did not assign a certified renovator to this renovation, as required by 40 C.F.R. § 745.89(d)(2).
19. Respondent's failure to assign a certified renovator constitutes a violation of 40 C.F.R. § 745.89(d)(2) and section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

20. Firms performing renovations on target housing are required to maintain records necessary to demonstrate compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.86.
21. Respondent failed to maintain records necessary to demonstrate compliance with the RRP Rule, in violation of 40 C.F.R. § 745.86.
22. Respondent's failure to maintain records constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

Count 4

23. Firms performing renovations on target housing are required to follow lead-safe work practices as described in the RRP Rule, pursuant to 40 C.F.R. § 745.85.
24. Respondent failed to follow lead-safe work practice standards, as required by 40 C.F.R. § 745.85.
25. Respondent's failure to follow lead-safe work practice standards constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

V. SETTLEMENT

26. The Parties agree that settlement of this matter is in the public interest, and the Parties agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
27. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as

justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.

28. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
29. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of five thousand six hundred ninety-five dollars (\$5,695) is appropriate to settle this matter.
30. Penalty Payment. Respondent agrees to pay a civil penalty in the amount of five thousand six hundred ninety-five dollars (\$5,695) in the manner described below:
 - a. Payment shall be made in two installments. The first is due no later than 90 calendar days from the date of the Final Order issued by the Regional Judicial Officer. The remaining installment is due 90 days after the due date for the first installment.
 - b. The first payment shall be in the amount of two thousand eight hundred forty-seven dollars and fifty cents (\$2,847.50). The remaining payment shall be in the amount of two thousand eight hundred forty-seven dollars and fifty cents (\$2,847.50).
 - c. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.
 - d. Payment of the civil penalty shall be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>.
 - e. Within 24 hours of payment, email proof of payment to Britta Copt and Shaula Eakins at copt.britta@epa.gov and eakins.shaula@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order).
31. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
32. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

- a. Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
 - b. Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
33. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

VI. GENERAL PROVISIONS

34. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
35. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the Parties, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
36. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both Parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
37. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.
38. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:

- a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
 - b. Claims based on criminal liability; and,
 - c. Claims based on any other violations of the Act or federal or state law.
39. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
40. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
41. Each party to this action shall bear its own costs and attorney fees, if any.
42. The Parties agree that this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement and any signature page may be transmitted electronically (*e.g.*, a PDF file).
43. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
44. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which the Final Order is filed approving this Consent Agreement.
45. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: eakins.shaula@epa.gov (for Complainant), and garrett@capitaldenver.com and phil@beallmanleylaw.com (for Respondent).

The foregoing Consent Agreement In the Matter of Capital Roofing & Restoration, Inc. is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Complainant.

Date: _____

By: **DAVID COBB**
Digitally signed by DAVID
COBB
Date: 2022.04.04 09:00:48
-06'00'
David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

CAPITAL ROOFING & RESTORATION, INC.,

Respondent.

Date: March 31, 2022

By: Garrett Lister

Printed Name: Garrett Lister

Title: Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **CAPITAL ROOFING AND RESTORATION, INC.; DOCKET NO.: TSCA-08-2022-0005** were sent via certified receipt email on April 8, 2022, to:

Respondent

Philip D. Karagozian
Beall & Associates
phil@beallmanleylaw.com

EPA Region 8

Shaula Eakins
Enforcement Attorney
Office of Regional Counsel

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

April 8, 2022

KATHERINE Digitally signed by
TRIBBETT KATHERINE TRIBBETT
Date: 2022.04.08
16:04:17 -06'00'

Kate Tribbett
Acting Regional Hearing Clerk