



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 70161370000022347391
Return Receipt Requested

Walter Rusinek, Senior Counsel
Procopio
12544 High Bluff Drive, Suite 300
San Diego, CA 92130

JAN 29 2018

Re: Consent Agreement and Final Order
In the Matter of: Renovation Realty, Inc.

Dear Mr. Rusinek:

Enclosed please find the final executed Consent Agreement and Final Order (CA/FO) between the United States Environmental Protection Agency, Region 9, and Renovation Realty, Inc.

Renovation Realty's full compliance with the payment terms and completion of all actions enumerated in this CA/FO will close this case.

If you have any questions, please contact Brian Riedel, in the Office of Regional Counsel, at (415) 972-3924.

Sincerely,

A handwritten signature in black ink, appearing to read "D. K. McDaniel", with a long horizontal flourish extending to the right.

Douglas K. McDaniel
Manager
Waste and Chemical Section
Enforcement Division

Enclosure

cc: Brian Riedel

1 SYLVIA QUAST
2 Regional Counsel

3 BRIAN P. RIEDEL
4 Assistant Regional Counsel
5 U.S. Environmental Protection Agency, Region 9
6 75 Hawthorne Street (ORC-2)
7 San Francisco, CA 94105
8 (415) 972-3924
9 riedel.brian@epa.gov

**** FILED ****
29 JAN 2018 - 01:00 PM
U.S. EPA - Region 09

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:

Renovation Realty, Inc.

Respondent.

Docket No. TSCA-09-2018-0001

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region 9, and Renovation Realty, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

I. AUTHORITY, JURISDICTION AND PARTIES

1. This a civil administrative penalty action brought against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Section 402 of TSCA, 15 U.S.C. § 2682, and its implementing rules issued at 40 C.F.R. Part 745, Subpart E – Residential Property Renovation ("Subpart E").

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Consent Agreement and Final Order 1

1 2. Complainant is the Director of the Enforcement Division, EPA, Region 9, who has been
2 duly delegated the authority to bring and settle this action under TSCA.

3 3. Respondent, a California corporation located in San Diego, California, is a residential
4 real estate renovation and service company.
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6 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

7 4. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), Subpart E
8 sets forth requirements for certification of individuals and firms engaged in lead-based paint
9 activities and work practice standards for renovation, repair and painting activities in target
10 housing.
11

12 5. "Target housing" means any housing constructed prior to 1978, except housing for the
13 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
14 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
15 U.S.C. § 2681.
16

17 6. "Renovation" means the modification of any existing structure, or portion thereof, that
18 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
19 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the
20 removal, modification or repair of painted surfaces or painted components (e.g., modification of
21 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
22 scraping, or other such activities that may generate paint dust); the removal of building
23 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
24 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
25 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
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1 term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

2 7. "Painted surface" means a component surface covered in whole or in part with paint or
3 other surface coatings. 40 C.F.R. § 745.83.

4 8. "Renovator" means any individual who either performs or directs workers who perform
5 renovations. A certified renovator is a renovator who has successfully completed a renovator
6 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.

7 9. "Person" means any natural or judicial person including any individual, corporation,
8 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any
9 interstate body; and any department, agency, or instrumentality of the Federal Government. 40
10 C.F.R. § 745.83.

11 10. "Firm" means a company, partnership, corporation, sole proprietorship, or individual
12 doing business, association, or other business entity; a Federal, State, Tribal, or local government
13 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

14 11. No firm may perform, offer, or claim to perform renovations without certification from
15 EPA under §745.89 in target housing, unless the renovation qualifies for the exception involving
16 a lead-free determination identified at § 745.82(a). 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

17 12. Firms performing renovations must ensure that a certified renovator is assigned to each
18 renovation performed by the firm and discharges all of the certified renovator responsibilities
19 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

20 13. Firms performing renovations must retain documentation of compliance with the
21 requirements of § 745.85, including documentation that a certified renovator was assigned to the
22 project; that the certified renovator provided on-the-job training for workers used on the project;
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1 that the certified renovator performed or directed workers who performed all of the work practice
2 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
3 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

4
5 14. A certified renovator must prepare the records required by § 745.86(b)(1)(ii) and (6). 40
6 C.F.R. § 745.90(b)(8).

7 15. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
8 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
9 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
10 \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
11 after January 12, 2009 but before November 2, 2015.
12

13 **III. ALLEGATIONS**

14 16. At all times relevant to this CAFO, the following six residential properties in California
15 were “target housing,” as that term is defined at Section 401 of TSCA, 15 U.S.C. § 2681:

16 10315 Gienke Lane, Santee

17 8539 Matterhorn Drive, Santee

18 3551 Mount Alvarez Avenue, San Diego

19 3527 Mount Acadia Boulevard, San Diego

20 8654 Friant Street, San Diego

21 5543 Forbes Avenue, San Diego

22
23 The properties listed in this Paragraph are collectively referenced in this CAFO as “Properties.”

24 17. Within the period of October 2014 to August 2015, Respondent performed at least one
25 “renovation,” as that term is defined at 40 C.F.R. § 745.83, for compensation at each of the
26
27

1 Properties. The renovations performed at the Properties within the October 2014 to August 2015
2 time frame are collectively referenced in this CAFO as "Renovations."

3 18. At all times relevant to this CAFO, Respondent was a "person," as that term is defined at 40
4 C.F.R. § 745.83.

5 19. At all times relevant to this CAFO, Respondent was a "firm," as that term is defined at 40
6 C.F.R. § 745.83.

7
8 FIRST CLAIM

9 20. Paragraphs 1-19 of this CAFO are realleged and are incorporated herein by reference.

10 21. Respondent performed Renovations at each of the Properties without firm certification
11 pursuant to 40 C.F.R. §§ 745.82(a)(2)(ii) and 745.89(a).

12 22. Respondent did not qualify for the exception involving a lead-free determination
13 identified in 40 C.F.R. § 745.82(a).

14 23. Respondent's performance of Renovations at each of the Properties without firm
15 certification pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of TSCA, 15
16 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

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19 SECOND CLAIM

20 24. Paragraphs 1-23 of this CAFO are realleged and are incorporated herein by reference.

21 25. Respondent did not ensure that a certified renovator discharged all of the certified
22 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the six
23 Properties.

24 26. Respondent's failure to ensure that a certified renovator discharged all of the certified
25 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the six
26

1 Properties constitutes six violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
2 § 745.89(d)(2).

3
4 THIRD CLAIM

5 27. Paragraphs 1-26 of this CAFO are realleged and are incorporated herein by reference.

6 28. With respect to the Renovations at the six Properties, Respondent did not retain
7 documentation that a certified renovator was assigned to the project; that a certified renovator
8 provided on-the-job training for workers used; that a certified renovator performed or directed
9 workers who performed all of the work practice tasks described in § 745.85(a); and that a
10 certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

11 29. Respondent's failures to retain documentation that a certified renovator was assigned to
12 the project; that a certified renovator provided on-the-job training for workers used; that a
13 certified renovator performed or directed workers who performed all of the work practice tasks
14 described in § 745.85(a); and that a certified renovator performed the post-renovation cleaning
15 verification described in § 745.85(b) for the Renovations performed at the six Properties
16 constitute twenty-four (24) violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
17 § 745.86(b)(6).

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20 **IV. RESPONDENT'S ADMISSIONS**

21 30. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
22 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
23 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
24 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
25 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
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1 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
2 Final Order contained in this CAFO.

3 **V. CIVIL ADMINISTRATIVE PENALTY**

4 31. Respondent agrees to the assessment of a penalty in the amount of FORTY-ONE
5 THOUSAND, SIX HUNDRED THIRTY-THREE DOLLARS (\$41,633) as final settlement of
6 the civil claims against Respondent arising under TSCA as alleged in Section III of this CAFO.
7

8 32. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
9 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
10 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
11 as follows:
12

13 Regular Mail:
14 U.S. Environmental Protection Agency
15 Fines and Penalties
16 Cincinnati Finance Center
17 PO Box 979077
18 St. Louis, MO 63197-9000

19 Wire Transfers:
20 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
21 following information:
22 Federal Reserve Bank of New York
23 ABA = 021030004
24 Account = 68010727
25 SWIFT address = FRNYUS33
26 33 Liberty Street
27 New York, NY 10045
28 Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

1 St. Louis, MO 63101

2 ACH (also known as REX or remittance express):
3 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
4 Account Number: 310006, Environmental Protection Agency
5 CTX Format Transaction Code 22 - checking
6 Physical location of US Treasury Facility
7 5700 Rivertech Court
8 Riverdale, MD 20737
9 Remittance Express (REX) 1-866-234-5681

10 On Line Payment:

11 This payment option can be accessed from the information below:

12 www.pay.gov

13 Enter "sfo1.1" in the search field

14 Open form and complete required fields

15 If clarification regarding a particular method of payment remittance is needed, contact the EPA
16 Cincinnati Finance Center at 513-487-2091.

17 Concurrently, a copy of the check or notification that the payment has been made by one of the
18 other methods listed above, including proof of the date payment was made, shall be sent with
19 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
20 following addressees:

21 Regional Hearing Clerk
22 Office of Regional Counsel (ORC-1)
23 U.S. Environmental Protection Agency, Region 9
24 75 Hawthorne Street
25 San Francisco, California 94105

26 Jennifer MacArthur
27 Waste & Chemical Section (ENF-2-2)
28 Enforcement Division
29 U.S. Environmental Protection Agency, Region 9
30 75 Hawthorne Street
31 San Francisco, CA 94105

32 33. Payment of the above civil administrative penalty shall not be used by Respondent or any
33 other person as a tax deduction from Respondent's federal, state, or local taxes.

34 In the Matter of: Renovation Realty, Inc.
35 Consent Agreement and Final Order 8

1 34. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
2 31 by the deadline specified in Paragraph 32, then Respondent shall pay to EPA a stipulated
3 penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue
4 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
5 become due and payable upon written request by EPA. In addition, failure to pay the civil
6 administrative penalty by the deadline specified in Paragraph 31 may lead to any or all of the
7 following actions:
8

9 a. The debt being referred to a credit reporting agency, a collection agency, or to the
10 Department of Justice for filing of a collection action in the appropriate United States District
11 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
12 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
13

14 b. The debt being collected by administrative offset (i.e., the withholding of money payable
15 by the United States to, or held by the United States for, a person to satisfy the debt the person
16 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
17 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
18

19 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
20 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
21 or funds. 40 C.F.R. § 13.17.
22

23 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
24 penalties charges, and administrative costs will be assessed against the outstanding amount that
25 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
26 deadline specified in Paragraph 33. Interest will be assessed at an annual rate that is equal to the
27

1 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
2 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
3 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
4 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
5 Administrative costs for handling and collecting Respondent's overdue debt will be based on
6 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
7 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
8 Department of Justice, the Internal Revenue Service), that department or agency may
9 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
10 collecting Respondent's overdue debt.
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13 **VI. RESPONDENT'S CERTIFICATION**

14 35. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
15 federal regulations promulgated at Subpart E.
16

17 **VII. RETENTION OF RIGHTS**

18 36. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
19 for federal civil penalties for the violations and facts specifically alleged in Section III of this
20 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
21 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
22 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
23 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
24 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
25 address any violation of this CAFO or any violation not specifically alleged in Section III of this
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1 CAFO.

2 37. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
3 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
4 permits.
5

6 **VIII. ATTORNEYS' FEES AND COSTS**

7 38. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
8 proceeding.

9 **IX. EFFECTIVE DATE**

10 39. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
11 on the date that the final order contained in this CAFO, having been approved and issued by
12 either the Regional Judicial Officer or Regional Administrator, is filed.
13

14 **X. BINDING EFFECT**

15 40. The undersigned representative of Complainant and the undersigned representative of
16 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
17 of this CAFO and to bind the party he or she represents to this CAFO.
18

19 41. The provisions of this CAFO shall apply to and be binding upon Respondent and its
20 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
21 and assigns.
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1 FOR RESPONDENT, RENOVATION REALTY, INC.

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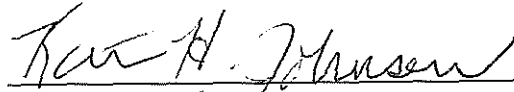
DATE


Name
Title CHAIRMAN
Renovation Realty, Inc.

FOR COMPLAINANT:

1/17/18

DATE


Kathleen H. Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency,
Region 9

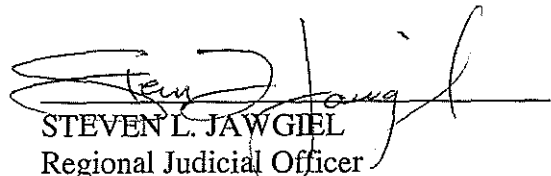
1 FINAL ORDER

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2018- ⁰⁰⁰¹ A) be

4 entered, and that Respondent shall pay a civil administrative penalty in the amount of FORTY-
5 ONE THOUSAND, SIX HUNDRED THIRTY-THREE DOLLARS (\$41,633) and comply with
6 the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final
7 Order shall become effective upon filing.
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9
10
11 01/26/18
DATE

12 
STEVEN L. JAWGIEL
13 Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (In the Matter of: Renovation Realty, Inc., TSCA-09-2018-_____) has been filed with the Regional Hearing Clerk for U.S. EPA, Region 9, and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

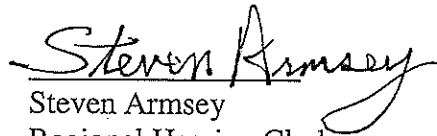
Walter E. Rusinek
Senior Counsel, Procopio
12544 High Bluff Drive, Suite 300
San Diego, CA 92130

Certified Mail # 7016 1370 0000 2234 7391

and Hand-Delivered to:

Brian P. Riedel
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Date: 2018-01-29



Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 9