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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

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REGIONAL HEARING CLERK
EPA REGION 6

In the Matter of	§	
	§	
Jupiter 120 LLC,	§	Docket No. TSCA-06-2025-6175
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Jupiter 120 LLC (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Jupiter 120 LLC, a company formed in the state of Texas and conducting business in the state of Texas.

Statutory and Regulatory Background

5. TSCA was amended with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 to 4856, with the addition of Title IV – Lead Exposure Reduction, Section 401 to 412 of TSCA, 15 U.S.C. §§ 2681 to 2692. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U.S.C. § 4851.

6. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. § 2682, 2686, and 2687, the EPA promulgated the Lead, Renovation, Repair and Painting (RRP) Rule at 40 C.F.R. Part 745, Subpart E - Residential Property Renovation, to ensure that owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before renovations begin; and individuals and firms performing renovations are certified and following work practice standards during the renovations. 40 C.F.R. § 745.80.

7. The requirements set forth in the regulations at 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, apply to all renovations performed for compensation in target

housing and child-occupied facilities, unless otherwise excluded as set forth in 40 C.F.R.

§ 745.82.

8. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart E.

9. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorize a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$48,512 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

Definitions

10. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

11. The regulation at 40 C.F.R. § 745.83 defines “renovation” as 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. 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, planning thresholds to install weather stripping); and interim controls that disturb painted surfaces.

12. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

13. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

EPA Findings of Fact and Conclusions of Law

14. Respondent is, and at all times referred to herein was, a “person” as defined by 40 C.F.R. § 745.83.

15. Respondent is, and at all times referred to herein was, a “firm” as defined by 40 C.F.R. § 745.83.

16. Pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, the EPA conducted an inspection on February 14, 2023, to evaluate Respondent’s compliance with TSCA and the RRP Rule.

17. At the time of the EPA inspection, and at all times referred to herein, Respondent was engaged in “renovations” as defined by 40 C.F.R. § 745.83.

18. At the time of the EPA inspection, and at all times referred to herein, Respondent performed “renovation... for compensation” per 40 C.F.R. § 745.82(a) at an apartment complex with 60 units located at 120 Jupiter Dr., Garland, TX 75040 (the “Properties”) that were “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

19. On May 3, 2024, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. On August 13, 2024, the EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning Respondent’s compliance with TSCA.

20. As a result of the EPA inspection and additional information obtained by the EPA, Complainant, has determined that violations of the RRP Rule and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s renovation activity at the Properties.

21. Since the inspection, and after compliance assistance from the EPA, Respondent has in good faith obtained certification and complied with the other rules and regulations of TSCA to the best of its knowledge.

EPA Findings of Violation

22. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

23. Complainant hereby states and alleges that Respondent has violated TSCA and the federal regulations promulgated thereunder as follows:

Count 1

24. With certain exceptions not relevant here, 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations.

25. Respondent had not applied to the EPA nor obtained certification pursuant to 40 C.F.R. § 745.89 from the EPA prior to performing the renovations at the Properties.

26. Respondent's failure to obtain certification from the EPA prior to performing renovations in target housing pursuant to 40 C.F.R. § 745.89 is a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2 & 3

27. 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 the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

28. Respondent failed to assign a certified renovator to the renovations performed by the firm at the Properties.

29. Respondent's failure to assign a certified renovator to the renovations at the Properties is a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4 & 5

30. 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 the

RRP Rule for a period of 3 years following completion of the renovation.

31. Pursuant to 40 C.F.R. § 745.86(b)(6), one of the records that must be retained for inspection is documentation of compliance with the requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for all workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

32. Respondent failed to prepare and retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 as required by 40 C.F.R. §§ 745.86(a) and 745.86(b)(6) for the renovations performed at the Properties.

33. Respondent's failure to prepare and retain records documenting compliance with the requirements of 40 C.F.R. § 745.85 for the renovations at the Properties is a violation of 40 C.F.R. § 745.86(a) and 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;

- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

35. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

36. By signing this Consent Agreement and Final Order, Respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

37. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

38. Respondent agrees to pay the penalty in four payments of Eleven Thousand Seventy-Nine Dollars (\$11,079) ("Assessed Penalty"). The four payments each include a Two Hundred Seventy-Two Dollars Seventy-Five Cents (\$272.75) interest payment based on the Treasury Current Value of Funds Rate. Respondent shall make the first payment within sixty (60) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date"), with subsequent payments due on or before February 1, 2025, June 1, 2025, and October 1, 2025.

39. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/make-payment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

40. When making a payment, Respondent shall:

(a) Identify every payment with Respondent's name and the docket number of this Agreement, Docket No. TSCA-06-2025-6175.

(b) Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s): Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.loreana@epa.gov; and
Stan Lancaster
Enforcement and Compliance Assurance Division
Toxics Enforcement Section
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDST)
Dallas, Texas 75270-2101
lancaster.stan@epa.gov; and
U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or 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 appropriate docket number and Respondent's name.

41. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- (a) Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is not paid in full by the due dates, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- (b) Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- (c) Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges,

that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

42. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- (a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- (b) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- (c) Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- (d) Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

43. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the

outstanding Assessed Penalty amount.

44. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

Effect of Settlement and Reservation of Rights

45. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.

Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

46. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

47. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

48. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 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 regulations promulgated thereunder.

49. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

50. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

51. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

52. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

53. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

54. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *george.elizabeth.a@epa.gov*

To Respondent: *spencer@assetmgttoday.com*

RESPONDENT
JUPITER 120 LLC

Date: 10/8/2024

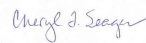
By: 
Signature

R. G. Spencer, Mgr.
Print Name

Manager
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: October 17, 2024



Digitally signed by CHERYL
SEAGER
Date: 2024.10.17 16:36:09 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

**THOMAS
RUCKI**

Thomas Rucki
Regional Judicial Officer

Digitally signed by THOMAS
RUCKI
Date: 2024.10.21 11:01:07
-04'00'

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant, EPA:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

spencer@assetmgttoday.com
R.G. Spencer
3021 Ridge Rd, Suite A277
Rockwall, TX 75032

Vaughn, Lorena

Digitally signed by Vaughn,
Lorena
Date: 2024.10.21 13:25:13 -05'00'

Regional Hearing Clerk
U.S. EPA, Region 6