

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2024-0021
)	
Magnusson Siding & Window, Inc.)	Proceeding to Assess a Civil
East Peoria, Illinois,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (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 (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Magnusson Siding & Window, Inc., a corporation with a place of business located at 3925 East Washington Street, East Peoria, Illinois 61611.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided in 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under age six; at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

13. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

14. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 745.87.

15. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

16. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. *73 Fed. Reg.* 21691 (April 22, 2008).

17. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

18. 40 C.F.R. § 745.83 defines *firm* to mean 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.

19. 40 C.F.R. § 745.83 defines *renovation* to mean 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 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, ceiling, 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.

20. 40 C.F.R. § 745.83 defines *renovator* to mean 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.

21. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

22. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$48,512 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, where

penalties are assessed on or after December 27, 2023.

Factual Allegations and Alleged Violations

23. At all times relevant to this CAFO, Respondent was a corporation with a place of business located at 3925 East Washington Street, East Peoria, Illinois, and was therefore a *firm* as defined by 40 C.F.R. § 745.83.

24. On April 20, 2023, EPA conducted an on-site inspection at Respondent’s place of business located at 3925 East Washington Street, East Peoria, Illinois, regarding Respondent’s compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

25. Based on information gathered during the on-site inspection on April 20, 2023, on six occasions from June 27, 2022, to December 5, 2022, Respondent performed or directed workers who performed window and siding replacements at the properties described in the chart below:

Renovation Work Performed at Target Housing

Housing Address	Year Built	Contracted Work	Date(s) Work Performed
900 North Stone School Road Elmwood, Illinois 61529	1952	Window Replacement	December 5, 2022
1517 South 4th Street Pekin, Illinois 61554	1941	Window Replacement	November 11, 2022
202 District Court East Peoria, Illinois 61611	1976	Window Replacement	December 2, 2022
5316 North Sherwood Avenue Peoria, Illinois 61614	1953	Window Replacement	December 2, 2022
218 East Embert Place Peoria, Illinois 61603	1936	Window and Siding Replacement	July 5, 2022
3114 South Walters School Road Mapleton, Illinois 61547	1942	Window Replacement	June 27, 2022

26. The window and siding replacements that Respondent performed at the properties listed

in paragraph 25, above, were modifications of the buildings' existing structure that resulted in disturbance of painted surfaces, and were therefore *renovations* as defined in 40 C.F.R. § 745.83.

27. Prior to the inspection, on March 17, 2023, EPA requested all records for the renovations that Respondent had performed during calendar year 2022. During the inspection, Respondent provided contracts for the six renovations identified in paragraph 25, above, but did not provide any records necessary to demonstrate compliance with work practice standards in 40 C.F.R. § 745.85.

28. The buildings listed at the addresses in paragraph 25, above, are residential housing built prior to 1978, and therefore are *target housing* as defined in 40 C.F.R. § 745.103.

29. Respondent either performed or directed workers to perform the renovations described in paragraph 25, above, and is therefore a *renovator* as defined in 40 C.F.R. § 745.83.

COUNT ONE

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

31. 40 C.F.R. § 745.84(a)(1) requires firms performing renovations to provide the owner of the unit with the EPA approved lead hazard information pamphlet and obtain written acknowledgement of receipt of the pamphlet from the owner or a certificate of mailing at least 7 days prior to the renovation.

32. For each renovation project described in paragraph 25, Respondent failed to provide the owner of the property with the EPA approved lead hazard information pamphlet, in violation of 40 C.F.R. § 745.84(a)(1) and 15 U.S.C. § 2689.

COUNT TWO

33. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

34. 40 C.F.R. § 745.89(b)(1)(iii) requires firms to obtain recertification before the firm's certification expires in order to continue performing renovations or dust sampling.

35. For each renovation project described in paragraph 25, Respondent failed to stop renovations or dust sampling after it failed to obtain recertification under 40 C.F.R. § 745.89(a), in violation of 40 C.F.R. § 745.89(b)(1)(iii) and 15 U.S.C. § 2689.

COUNT THREE

36. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

37. 40 C.F.R. § 745.89(d)(1) requires firms performing renovations to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

38. For each renovation project described in paragraph 25, Respondent failed to ensure all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, in violation of 40 C.F.R. § 745.89(d)(1) and 15 U.S.C. § 2689.

COUNT FOUR

39. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

40. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to 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.

41. For each renovation project described in paragraph 25, Respondent failed to ensure 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, in violation of 40 C.F.R. § 745.89(d)(2) and 15 U.S.C. § 2689.

COUNT FIVE

42. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

43. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator was assigned to the renovation project.

44. For each renovation project described in paragraph 25, Respondent failed to document that a certified renovator was assigned to the renovation project, in violation of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689.

COUNT SIX

45. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

46. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a).

47. For each renovation project described in paragraph 25, Respondent failed to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a), in violation of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689.

COUNT SEVEN

48. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

49. 40 C.F.R. § 745.86(b)(6)(i) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed on-the-job training for workers used on the renovation project.

50. For each renovation project described in paragraph 25, Respondent failed to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed on-the-job training for workers used on each renovation project in violation of in violation of 40 C.F.R. § 745.86(b)(6)(i) and 15 U.S.C. § 2689.

COUNT EIGHT

51. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

52. 40 C.F.R. § 745.86(b)(6)(viii) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed the post-cleaning verification described in 40 C.F.R. § 745.85(b).

53. For each renovation project described in paragraph 25, Respondent failed to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that the certified renovator performed the post-cleaning verification described in 40 C.F.R. § 745.85(b) in violation of 40 C.F.R. § 745.85(6)(viii) and 15 U.S.C. § 2689.

COUNT NINE

54. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

55. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice

standards in 40 C.F.R. § 745.85 by retaining a copy of a certification from the certified renovator assigned to the project certifying the requirements in 40 C.F.R. § 745.86(b)(6)(i) through (viii) were completed.

56. For each renovation project described in paragraph 25, Respondent failed to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining a copy of a certification from the certified renovator assigned to the project certifying the requirements in 40 C.F.R. § 745.86(b)(6)(i) through (viii) were completed in violation of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689.

COUNT TEN

57. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

58. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining a copy of the certified renovator's training certificate.

59. For each renovation project described in paragraph 25, Respondent failed to retain a copy of the certified renovator's training certificate in violation of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689.

Civil Penalty

60. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$45,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty*

Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, Revised April 5, 2013.

61. Respondent agrees to pay a civil penalty in the amount of \$45,000 (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”). EPA conducted an analysis of Respondent’s financial information and determined Respondent has a limited ability to pay. Consequently, in accordance with applicable law, EPA determined that the Assessed Penalty is an appropriate amount to settle this action.

62. 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/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

63. When making a payment, Respondent shall:

- a. Identify every payment with Respondent’s name and the docket number of this Agreement, TSCA-05-2024-0021,
- b. Concurrently with any payment or within 24 hours of any payment,

Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Craig Meredith
Pesticides and Toxics Compliance Section
U.S. Environmental Protection Agency, Region 5
Meredith.craig@epa.gov
and
R5LEECAB@epa.gov

Tasia Kastanek

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Kastanek.tasia@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
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.

64. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, 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 standard 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 each subsequent 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, and other charges, that remain delinquent more than ninety (90) days.

65. 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 may 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, 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, 40 C.F.R. § 13.17.

- d. Per 15 U.S.C. § 2615(a), the Attorney General will bring a civil action in the appropriate district court to recover the full remaining balance of the debt plus interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

General Provisions

66. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: kastanek.tasia@epa.gov (for Complainant), and adam@magnussonsidingswindow.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

67. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

68. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

69. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

70. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

71. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C.

§ 2615(a)(2)(B).

72. The terms of this CAFO bind Respondent, and its successors and assigns.

73. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

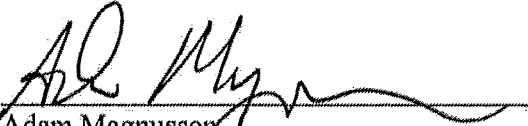
74. Each party agrees to bear its own costs and attorneys' fees in this action.

75. This CAFO constitutes the entire agreement between the parties.

Magnusson Siding & Window, Inc., Respondent

9/20/2024

Date



Adam Magnusson
Registered Agent
Magnusson Siding & Window, Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Magnusson Siding & Window, Inc.
Docket No.: TSCA-05-2024-0021**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5