

FILED

July 18, 2024

8:31 A.M. PST

**U.S. EPA REGION 10
HEARING CLERK**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	
)	DOCKET NO. TSCA-10-2024-0106
)	
FXD CONSTRUCTION LLC)	EXPEDITED SETTLEMENT
)	AGREEMENT AND
)	FINAL ORDER
)	
Portland, Oregon)	
)	
Respondent.)	
)	

EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER

1. The U.S. Environmental Protection Agency (“EPA”) alleges that FXD Construction LLC (“Respondent”) failed to comply with Section 402(c) of the U.S. Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (“TSCA”).

2. The State of Oregon is authorized under Section 404(a) of TSCA, 15 U.S.C. § 2684(a), and 40 C.F.R. § 745.324(d) to administer and enforce requirements for a renovation, repair, and painting (RRP) program in accordance with Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with Section 406(b) of TSCA, 15 U.S.C. § 2686(b).

3. Section 404(b) of TSCA, 15 U.S.C. § 2684(b), makes it unlawful for any person to violate or fail or refuse to comply with any requirement of a state program authorized under Section 404 of TSCA, 15 U.S.C. § 2684.

**In the Matter of: FXD Construction LLC
Docket Number: TSCA-10-2024-0106
Expedited Settlement Agreement**

**U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101**

4. The State of Oregon has adopted by reference the federal rules at 40 C.F.R. Part 745, Subpart E - Residential Property Renovation under the Oregon Administrative Rule (OAR) 333-070-0200.

5. Under OAR 333-070-0200(2) (incorporating 40 C.F.R. § 745.81(a)(2)(ii)), Respondent was required to obtain initial firm certification before performing, offering, or claiming to perform renovations for compensation at 9313 North Burr Avenue, Portland, Oregon 97203 (“Target Property”).

6. On January 5, 2024, Respondent was issued Building Permit 2023-098964-000-00-RS from the City of Portland Permit Center to conduct a renovation for compensation at the Target Property.

7. The Target Property was constructed in 1954, prior to 1978, and is target housing within the meaning of 15 U.S.C. § 2681(17).

8. Respondent was not firm certified when it offered, performed, or claimed to perform a renovation at the Target Property, in violation of OAR 333-070-0200(2) (incorporating 40 C.F.R. § 745.81(a)(2)(ii)).

9. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). After considering these factors, EPA has determined, and Respondent agrees that an appropriate penalty to settle this action is **\$200**.

10. Upon signing this Expedited Settlement Agreement (“Agreement”), Respondent shall deposit the civil penalty amount listed in paragraph 9 by one of the following methods:

10.1 Send a cashier's or certified check or money order with a notation for TSCA-10-2024-0106 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-10-2024-0106
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

10.2 Send a cashier's or certified check or money order by an overnight/common carrier (*e.g.*, FedEx® or United Parcel Service of America, Inc.) with a notation for TSCA-10-2024-0106 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979078
Docket No. TSCA-10-2024-0106
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

10.3 Make an electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <https://www.pay.gov/public/form/entry/101/11751879/> following the online directions for an electronic funds transfer (EFT).

11. Concurrently with the deposit under paragraph 10, Respondent shall forward a scanned, ink signed PDF copy of the Agreement, and a copy of the cashier's or certified check or

money order or documentation of a wire transfer via email to Kim Farnham, Lead-Based Paint Compliance Officer at the following email address: farnham.kim@epa.gov. By written notice to Respondent, EPA may change the address and/or person listed above.

12. EPA is authorized to enter into this Agreement, and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. § 22.13(b).

13. In signing this Agreement, for purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (b) neither admits nor denies the factual allegations in this Agreement; (c) consents to the assessment of this penalty; and (d) waives any right to contest the allegations contained in this Agreement, and its right to appeal the attached Final Order.

14. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) is currently in compliance with the firm certification requirements as stated in OAR 330-0700-0200(2) (incorporating 40 C.F.R. § 745.81(a)(2)(ii)); (b) agrees to provide a deposit for payment of the civil penalty as set forth in paragraph 9; (c) agrees to submit a true and accurate proof of deposit for payment of the civil penalty as set forth in paragraph 10; and (d) agrees to release said deposit for payment to EPA upon entry of the Final Order attached hereto.

15. Upon the effective date of this Agreement and subsequent payment of the civil penalty as set forth in paragraph 9, Respondent shall be resolved of liability for Federal civil penalties for the violation(s) and facts alleged herein.

16. The penalty, including interest, paid by Respondent pursuant to the requirements of this Agreement, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.

17. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.

18. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

19. Each party shall bear its own costs and fees, if any.

20. The Agreement authorized by EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

21. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

IT IS SO AGREED,

Respondent Name (print): KELLY BARRON

Respondent Title (print): OWNER FXD CONSTRUCTION LLC

Respondent Signature: Kelly B

Date: 7/1/2024

APPROVED BY EPA:

Edward Kowalski, Director
Enforcement and Compliance Assurance Division
EPA Region 10

Date: _____

FINAL ORDER

Pursuant to the authority of Section 16 of TSCA, 15 U.S.C. § 2615, and according to the terms of the Expedited Settlement Agreement, IT IS HEREBY ORDERED THAT:

This agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 10. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

SO ORDERED this _____ day of _____, 2024.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: FDX Construction LLC, Docket Number TSCA-10-2024-0106** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Ms. Kim Farnham
Lead-Based Paint Compliance Officer
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155, 20-C04
Seattle, Washington 98101
Farnham.kim@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Mr. Kelly C. Barron
Owner
FXD Construction LLC
7715 North Seneca Street
Portland, Oregon 97203
fxdconstructionpdx@gmail.com

DATED this _____ day of _____, 2024.

Regional Hearing Clerk
EPA Region 10