

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2024-0023
)	
River City Window and Door, LLC d/b/a)	Proceeding to Assess a Civil
Pella Windows and Doors of Peoria)	Penalty Under Section 16(a) of the
Peoria, Illinois,)	Toxic Substances Control Act,
)	15 U.S.C. § 2615(a)
Respondent.)	

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 Sections 22.1(a)(5), 22.13(b), and 22.18(b)(2) (3) of 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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is River City Window and Door, LLC d/b/a Pella Windows and Doors of Peoria, an Illinois corporation with a place of business located at 4308 North Sheridan Road Suite A, Peoria, Illinois 61614.

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 terms of this CAFO, including the assessment of the civil penalty specified below.

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, 1992 (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 (6); 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 1021 of Title X amended TSCA by adding Sections 401-12, entitled Lead Exposure Reduction, at 15 U.S.C. §§ 2681-92. 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 ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

14. 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.

15. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682, 2686, and 2687, 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 engaged in lead-based paint activities; 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).

16. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed for compensation in target housing and child-occupied facilities, with certain exceptions not relevant here.

17. 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.

18. 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, ceilings, 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.

19. 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.

20. 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.

21. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

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.

Factual Allegations and Alleged Violations

23. Complainant incorporates paragraphs 1 through 22 of this CAFO as if set forth in this paragraph.

24. At all times relevant to this CAFO, Respondent was a corporation with a place of business located at 4308 North Sheridan Road Suite A, Peoria, Illinois 61614, and was therefore a *firm* as defined by 40 C.F.R. § 745.83.

25. On April 18, 2023, EPA conducted an RRP Rule recordkeeping inspection at Respondent's place of business located at 4308 North Sheridan Road Suite A, Peoria, Illinois 61614 regarding Respondent's compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E.

26. During the onsite RRP recordkeeping inspection, EPA requested Respondent provide for each renovation, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification issued by EPA, copies of all contracts and/or agreements for renovation (contracts), copies of all acknowledgements of receipt of a pamphlet by the owners and occupants of residential housing, and renovation records maintained as required by the RRP Rule.

27. Based on information Respondent provided during the recordkeeping inspection and building-year information publicly available on the local property value assessment websites, Respondent directed workers to perform for compensation the following modifications of existing structures that resulted in disturbances of painted surfaces at the properties described in the chart below:

Renovation Work Performed at Target Housing

Line No.	Housing Address	Residence Type	Year Built	Contracted Work	Date(s) Work Performed
1	2513 7th Avenue Rock Island, Illinois 61201	Multi-Family Duplex	1910	Window replacements	1/31/2022 to 2/1/2022
2	2008 N. North Street Peoria, Illinois 61604	Single-Family	1924	Window replacements	10/19/2022 to 10/21/2022
3	1313 W. Columbia Terrace Peoria, Illinois 61606	Single-Family	1912	Window replacements	6/17/2022 to 6/19/2022
4	1114 N. Institute Place Peoria, Illinois 61606	Single-Family	1914	Window replacements	7/25/2022 to 8/2/20022

28. The window replacements that Respondent performed at the properties listed in paragraph 27, 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.

29. The four renovations referenced in paragraph 27 were each performed at residential housing built prior to 1978, and therefore the residential housing was *target housing* as defined in 40 C.F.R. § 745.103.

30. Respondent either performed or directed workers to perform the renovations described in paragraph 27 and is therefore a *renovator* as defined at 40 C.F.R. § 745.83.

31. On May 1, 2024, Complainant issued to Respondent a Notice of Intent to File Administrative Complaint for alleged violations, including those listed below.

Counts 1 to 4– Failure to Obtain Written Acknowledgement of the EPA-Approved Lead Hazard Informational Pamphlet

32. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

33. 40 C.F.R. § 745.84(a)(1) requires firms performing renovations, no more than 60 days before beginning renovation activities, to provide the owner of the unit with the lead hazard informational pamphlet and obtain, from the owner, either a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovation.

34. At all four renovations described in the Table in paragraph 27, Respondent performed contracted renovations at the target housing dwellings and failed to obtain, from the owner, the written acknowledgement that the owner had received the pamphlet within 60 days of the renovation.

35. Respondent's failure to obtain, from the owner, the written acknowledgement that the owner had received the pamphlet no more than 60 days before beginning renovation activities or obtain a certificate of mailing at least seven days prior to the renovation at the four residential dwelling units described in the Table in paragraph 27 constitutes four violations of 40 C.F.R. § 745.84(a)(1) and 15 U.S.C. § 2689.

**Counts 5 to 6 – Failure to Retain All Records Necessary to Demonstrate Compliance with
40 C.F.R. Part 745, Subpart E**

36. Complainant incorporates paragraphs 1 through 31 of this CAFO as if set forth in this paragraph.

37. 40 C.F.R. § 745.86(b)(6) requires a firm to retain the following records:

- a. Documentation of compliance with the work practice standards in 40 C.F.R § 745.85;
- b. Documentation that a certified renovator was assigned to the project;
- c. Documentation that the certified renovator provided on-the-job training for workers used on the project;
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a); and
- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

38. At two renovations described in paragraph 27, Line Nos. 1 and 2 of the Table, Respondent failed to establish and maintain the following records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of each renovation:

- a. At the renovation described in paragraph 27, Line No. 1 of the Table, documentation from the certified renovator that warning signs were posted at the entrances to the work area described in 40 C.F.R. § 745.85(a), in violation of 40 C.F.R. § 745.86(b)(6)(ii); and
- b. At the renovations described in paragraph 27, Line Nos. 1 and 2 of the Table, documentation that the certified renovator performed the post-

renovation cleaning verification described in 40 C.F.R. § 745.85(b), in violation of 40 C.F.R. § 745.86(b)(6)(viii).

39. Respondent's failure to establish and maintain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of the two contracted renovations described in paragraph 27, Line Nos. 1 and 2 of the Table, constitutes two violations of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(b), and 15 U.S.C. § 2689.

Count 7– Failure to Assign a Certified Renovator to the Renovation Projects

40. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

41. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 45.789 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a).

42. 40 C.F.R. § 745.89(d)(2) requires the firm performing the renovation 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.

43. At one renovation described in paragraph 27, Line No. 1 of the Table, Respondent performed or directed to perform the renovation and did not assign a certified renovator to the renovation.

44. Respondent's failure to ensure that a certified renovator was assigned to one renovation described in paragraph 27, Line No. 1 of the Table, constitutes one violation of 40 C.F.R. § 745.89(d)(2), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 8 and 10– Failure to Assign a Certified Renovation Firm to the Renovation Projects

45. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

46. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a).

47. 40 C.F.R. § 745.89(d)(3) requires the firm performing the renovation to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

48. 40 C.F.R. § 745.85(a) requires renovations be performed by certified firms using certified renovators as directed in § 745.89.

49. At three renovations described in paragraph 27, Line Nos. 1, 2 and 4 of the Table, Respondent failed to ensure that renovations performed by contractors of the firm were performed in accordance with the work practice standards in 40 C.F.R. § 745.85 by failing to ensure that the contractors of the firm were certified as a firm at the time of the renovations.

50. Respondent's failure to ensure that renovations performed by contractors of the firm were performed in accordance with the work practice standards in 40 C.F.R. § 745.85 by failing to ensure that the contractors of the firm were certified as a firm at the time of the renovations described in paragraph 27, Line Nos. 1, 2, and 4 of the Table, constitutes three violations of 40 C.F.R. § 745.89(d)(3), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Civil Penalty

51. 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 \$23,987. 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.

52. Respondent agrees to pay a civil penalty in the amount of \$23,987 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

53. 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>.

54. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, TSCA-05-2024-0023,

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 (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Michael Todd (ECP-17J)
Pesticides and Toxics Compliance Section

U.S. EPA, Region 5
todd.michael@epa.gov

Olivia Bauer (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
bauer.olivia@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.

55. 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.

56. 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

57. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: bauer.olivia@epa.gov (for Complainant), and brian@rivercitypella.com (for Respondent).

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

59. 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.

60. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, and local laws.

61. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

62. 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).

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

64. 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.

65. Each party agrees to bear its own costs and attorney's fees in this action.

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

Consent Agreement and Final Order

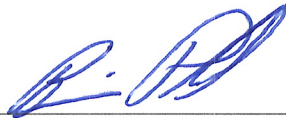
In the Matter of: River City Window and Door, Inc. d/b/a Peoria Windows and Doors of Peoria

Docket No. TSCA-05-2024-0023

**River City Window and Door, Inc. d/b/a Peoria Windows and Doors of Peoria,
Respondent**

9/16/2024

Date



Brian Purscell

Owner

River City Window and Door, Inc. d/b/a Pella
Windows and Doors of Peoria

Consent Agreement and Final Order

In the Matter of: River City Window and Door, Inc. d/b/a Peoria Windows and Doors of Peoria

Docket No.: TSCA-05-2024-0023

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance and Assurance Division

Consent Agreement and Final Order
In the Matter of: River City Window and Doors, Inc. d/b/a Peoria Window and Doors of Peoria
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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