

APR 27 2018

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

ENVIRONMENTAL APPEALS BOARD

In the Matter of )  
)  
) Docket No. TSCA-HQ-2018-5004  
Magnolia Waco Properties, LLC d/b/a )  
Magnolia Homes )  
)  
)  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of a civil penalty was commenced on November 29, 2017 when Complainant, the U.S. Environmental Protection Agency (“EPA” or “Complainant”), pursuant to Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615, filed a Complaint and Notice of Opportunity for Hearing (“Complaint”) with the EPA Headquarters’ Hearing Clerk alleging that Respondent, Magnolia Waco Properties, LLC d/b/a Magnolia Homes (“Magnolia” or “Respondent”), a Texas limited liability corporation, 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, *Residential Property Renovation*. The Complaint proposed a civil penalty against Respondent, and the parties subsequently entered negotiations in an attempt to settle the alleged violations. This Consent Agreement and Final Order is the result of such negotiations.

2. Complainant and Respondent hereby enter into this Consent Agreement (“Agreement” or “Consent Agreement”), and the attached Final Order (collectively, the “CAFO”) before adjudicating any issues of law or fact.

3. This CAFO resolves an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Pursuant to Section 16(a)(2)(C), “[t]he Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection.”

**II. PARTIES**

4. Complainant, by delegation from the Administrator of the U.S. Environmental Protection Agency, is Gregory Sullivan, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement and Compliance Assurance. Gregory Sullivan is authorized by lawful delegation to initiate and settle civil administrative actions brought pursuant to Section 15 and Section 16 of TSCA. Pursuant to Section 16(a)(2)(C) of TSCA and by lawful delegation, the

Director of the Waste and Chemical Enforcement Division is authorized to sign agreements and orders to remit all or part of a civil administrative penalty if Respondent satisfies conditions specified by agreement and to sign an order not remitting the penalty and declaring the penalty due if the EPA determines that Respondent has not satisfied conditions of the agreement.

5. Respondent is Magnolia Waco Properties, LLC d/b/a Magnolia Homes, a limited liability corporation registered in the State of Texas.

### **III. CONSENT AGREEMENT**

6. 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 in the Complaint;
- b. neither admits nor denies specific factual allegations contained in the Complaint;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified in this Consent Agreement;
- f. waives any right to contest the alleged violations of law set forth in the Complaint; and
- g. waives its rights to appeal the Final Order accompanying this Consent Agreement.

7. 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 and to completion of the Supplemental Environmental Project (“SEP”) described below.

8. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney’s fees.

#### **A. Penalty Payment**

9. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, EPA considered the nature, circumstances, extent, and gravity of the alleged violations; Respondent’s ability to pay; the effect of the penalty on Respondent’s ability to continue operations; Respondent’s history of prior violations; Respondent’s degree of culpability; any economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors and the factors set forth 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* dated August, 2010 (“LBP Consolidated ERPP”), EPA determined that a civil penalty in the amount of Five-Hundred Fifty-Six Thousand Dollars (\$556,000.00) is assessed against Respondent for the violations of TSCA alleged herein.

10. Pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), and 40 C.F.R. § 22.31, Respondent and EPA agree that payment of such civil penalty by Respondent is remitted on the conditions set forth in Section III.C. of this CAFO.

11. EPA agrees to remit Three Hundred Fifty-Six Thousand Dollars (\$356,000.00) of the civil penalty, for the TSCA violations alleged herein through the effective date of this CAFO, conditioned upon Respondent’s compliance with all the terms and Conditions set forth in Section III.C., to EPA’s satisfaction.

12. EPA and Respondent agree that, in compromise of the claims alleged in the Complaint and upon the Conditions set forth in Section III.C. of this Consent Agreement and Final Order, Respondent shall pay a civil penalty of forty thousand dollars (\$40,000.00) as set forth below, and shall perform a SEP as set forth in this CAFO. Respondent shall spend no less than One Hundred Sixty Thousand Dollars (\$160,000.00) to perform the SEP. The SEP is further described below.

13. Respondent shall pay the penalty within thirty (30) days of the effective date of this CAFO. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier’s check made payable to the “United States Treasury” and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

14. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Hearing Clerk, Mail Code 1900  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460; and

Amos Presler, Mail Code 2243  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

15. Respondent understands that its failure to timely pay any portion of the civil penalty as stated herein may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **B. Compliance Requirements**

16. Respondent shall henceforth comply with all applicable requirements of Sections 402(c) and 406(b) of TSCA and their implementing regulations in connection with any renovations conducted in Target Housing.

17. Respondent shall retain its current Firm Certification as set forth in 40 C.F.R. § 745.89(a). If Respondent intends to continue working on projects that involve renovation of Target Housing beyond the expiration date of Respondent's current Firm Certification, Respondent shall timely renew its Firm Certification as set forth in 40 C.F.R. § 745.89(b).

18. Compliance Management: Respondent will designate an individual employed by Respondent as a point of contact to monitor Respondent's compliance with the requirements of this CAFO and will be the liaison for the purposes of implementing this CAFO.

19. Recordkeeping:

- a. Upon completion of any project involving a renovation, as defined by 40 C.F.R. § 745.83, of Target Housing, as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), Respondent will complete a copy of the Renovation Recordkeeping Checklist ("Checklist") attached to this CAFO as Exhibit A to document its compliance with 40 C.F.R. Part 745, Subpart E.
- b. Respondent will obtain a completed Checklist from any Contractor hired by Respondent to perform activities covered by 40 C.F.R. Part 745, Subpart E if the Contractor performs work that affects surfaces that have not been verified as lead-free prior to the Contractor commencing its work and the work does not fall within the parameters of minor repair and maintenance activities as defined by 40 C.F.R. § 745.83.
- c. For three (3) years after the completion of each renovation at each Target Housing property, Respondent will maintain all records demonstrating

compliance with 40 C.F.R. Part 745, Subpart E, at a central location or electronically.

20. Renovation Firms Hired by Respondent

- a. Respondent shall use only Certified Firms as Contractors to perform any renovation in Target Housing to the extent required by Sections 402(c) and 406(b) of TSCA and their implementing regulations.
- b. Respondent shall require its Contractors to use the Checklist to ensure compliance with the requirements of the 40 C.F.R. Part 745, Subpart E.

21. Respondent shall suspend any Contractor with an expired Firm Certification until that Contractor renews or otherwise has its Firm Certification reinstated. Magnolia shall notify EPA in its periodic reports pursuant to Paragraph 22 of each suspension.

22. Periodic Reporting and Notification: Not later than ninety (90) days after the effective date of the CAFO, Respondent shall submit a report to EPA regarding Respondent's implementation of the CAFO. Thereafter, the reporting period for each periodic report shall be one-hundred eighty (180) days. Respondent shall continue to submit periodic reports until six 180-day reports have been submitted. Each periodic report shall include:

- a. A list of Target Housing properties under renovation during the prior reporting period, with the following information for each:
  - (i) Address of property renovated,
  - (ii) Date of the building's construction,
  - (iii) Date of commencement of renovation and, if applicable, completion,
  - (iv) Scope of work,
  - (v) Specification of Contractor Renovations Firms hired by Respondent to perform renovation activities subject to 40 C.F.R. Part 745, Subpart E, and
  - (vi) Copy of the completed Checklist, if renovation was completed.
- b. A list of Target Housing properties planned for renovation during the next reporting period, if known, with the following information for each:
  - (i) Address of property renovated,
  - (ii) Date of the building's construction,
  - (iii) Scope of work, and
  - (iv) Estimated date of renovation's commencement.
- c. A list of Target Housing properties in which Respondent performed renovations during the prior reporting period but were determined not to

be subject to the 40 C.F.R. Part 745, Subpart E, due to falling within one of the exceptions listed in 40 C.F.R. § 745.82(a). For each property listed, Respondent shall provide documentation and results of the applicable risk assessment or lead testing.

### C. Conditions

Respondent and EPA have also agreed, in compromise of the civil penalty that otherwise may be imposed herein, to the following conditions of settlement:

23. Communication of RRP Certification: Respondent shall post a copy of Respondent's Certified Renovator certificate OR the EPA certified logo OR an EPA-approved lead outreach banner, to Respondent's public website, currently [www.magnolia.com](http://www.magnolia.com), or an equivalent successor or affiliated internet platform which Respondent owns, manages or controls, within ninety (90) days of the execution of this CAFO and will be maintained on the website for a period of three (3) years, or if Respondent does not renew its current RRP certification, for the remaining duration of Respondent's current RRP certification.

24. Website Project Video: Respondent shall produce a Video about renovations involving lead-based paint, primarily featuring Chip Gaines, and post the Video to Respondent's public website, currently [www.magnolia.com](http://www.magnolia.com), or an equivalent successor or affiliated internet platform which Respondent owns, manages or controls, within ninety (90) days of the execution of this CAFO, for a consecutive period lasting no less than one (1) year from the effective date of this CAFO. Respondent may use footage associated with the television program *Fixer Upper* to satisfy the requirements of this paragraph, including footage also used to satisfy the conditions set forth at Paragraph 25 ("Episode of *Fixer Upper* Project") of this CAFO, so long as Respondent acquires the necessary permissions and rights to post such footage to Respondent's website. The Video script and content will be developed in consultation with EPA. The duration of the Video shall be no less than three minutes and shall include, at a minimum, the following elements:

- a. Discussion of the use of lead-based paint in homes prior to 1978 and its continuing presence in older homes;
- b. General discussion of the danger of human exposure to lead-based paint, especially to children;
- c. Discussion of the general nature of the requirements in 40 C.F.R. Part 745, Subpart E, and a recommendation that viewers check these as well as their local and state regulations before renovating a home built prior to 1978;
- d. Discussion of the benefit of using RRP Certified Firms and Renovators;
- e. Visual depiction of no less than four (4) of the safe work practices described in 40 C.F.R. § 745.85, such as removing or covering all objects in the work area, including furniture, rugs, and window coverings pursuant

to § 745.85(a)(2)(i)(A); closing and covering duct openings pursuant to § 745.85(a)(2)(i)(B); closing windows and covering doors with plastic sheeting pursuant to § 745.85(a)(2)(i)(C); using plastic sheeting or other impermeable materials to cover interior floors pursuant to § 745.85(a)(2)(i)(D) or ground, for exterior renovation, pursuant to § 745.85(a)(2)(ii)(C); using a HEPA vacuum attachment with a sanding machine pursuant to § 745.85(a)(3)(ii); containing renovation waste to prevent the release of dust and debris when the waste is removed from the worksite, pursuant to § 745.85(a)(4)(i);

- f. Discussion or depiction of no less of that one (1) example of post-renovation cleaning verification pursuant to 40 C.F.R. § 745.85(b); and
- g. A statement in the credits of the Video indicating that the video project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

Respondent shall cause Chip Gaines to dedicate from his Twitter account, currently @chipgaines, or an equivalent successor Twitter account which Chip Gaines owns, manages or controls, one (1) tweet with a link to, and a brief description of, the Video following the completion of the Video; and one (1) tweet on the topic of lead-based paint sixty (60) days later, for a total of two (2) tweets.

In addition, Respondent shall cause Chip Gaines to dedicate from his Instagram account, currently @chipgaines, or an equivalent successor Instagram account which Chip Gaines owns, manages or controls, one (1) post containing an excerpt of the Video, with a caption that includes a description of where to locate the full Video on Respondent's website, within sixty (60) days following completion of the Video.

25. Episode of *Fixer Upper* Project: Respondent agreed, in consideration of the parties' settlement of this matter, to integrate at least three of the requirements set forth in the subparagraphs of Paragraph 24 ("Website Project Video") into an episode of *Fixer Upper* ("Episode") to air at least once on television. Respondent also agreed to provide EPA with advance notice of the scheduled airing of the Episode and to cause Chip Gaines to dedicate from his Twitter account, @chipgaines, two (2) tweets about the Episode. Respondent satisfied the requirements of this Paragraph 25 with the airing of the Episode on March 21, 2018 and the tweets by Chip Gaines during the Episode on March 21, 2018 and following the Episode on March 22, 2018.

26. Prior to making a determination that Respondent has failed to comply with any term or condition set forth in Section III.C., EPA will give Respondent written notice or notices of deficiencies, and provide Respondent at least thirty (30) days, or other reasonable time(s) to cure such deficiencies.

27. If EPA determines that Respondent has failed to comply with any term or

condition set forth in Section III.C., fully and satisfactorily, EPA may issue a non-remittance Order requiring Respondent to pay the remaining Three Hundred Fifty-Six Thousand Dollars (\$356,000.00) or a lesser amount, plus interest accrued from the effective date of this CAFO. Respondent waives its right to a hearing under 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), or any other law. Respondent further agrees to be bound by EPA's determination under this paragraph, or, if Respondent invokes Dispute Resolution (Section III.D.), Respondent agrees to be bound by EPA's determination in Dispute Resolution.

#### **D. Dispute Resolution**

28. The parties shall use their best efforts informally and in good faith to resolve disputes and differences of opinion, which may arise concerning this CAFO. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by EPA pursuant to this CAFO with respect to the following: (1) satisfaction of Conditions (Section III.C); or (2) an EPA determination to issue a non-remittance Order (Paragraph 27), Respondent shall notify EPA in writing of such objections and the basis (or bases) therefore within twenty (20) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (or bases) for Respondent's position, and any matters the Respondent considers necessary for EPA's determination. Following EPA's receipt of such written notice, EPA will provide Respondent with its final determination in writing on a pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

#### **E. Supplemental Environmental Project**

29. In response to the violations of TSCA alleged in the Complaint and in settlement of this matter, although not required by TSCA or any other federal, state, or local law, Respondent shall complete the SEP described in this CAFO, which the parties agree is intended to secure significant environmental or public health protection and improvement.

30. Respondent shall complete the following SEP: A SEP designed to protect families by abating lead-based paint hazards in a number of child-occupied facilities as defined at 40 C.F.R. § 745.83, or Target Housing, in or about the North Waco, Texas area. This SEP may include, but is not limited to, window and/or door replacement, the removal of lead-based paint and dust, the permanent enclosure or encapsulation of lead-based paint, and the replacement of lead-based painted surface or fixtures. The focus of this SEP shall be lead abatement at low-income residences or child-occupied facilities where children age six and under and/or pregnant women reside or regularly visit, and whose occupants are unable to afford the costs of such work.

31. Respondent shall use a third-party entity, licensed and/or certified by the State of Texas, to perform any lead-abatement activities under this SEP. Respondent shall use another third party, licensed and/or certified by the State of Texas, to certify the abatement following work performed on each residence. Respondent is responsible for ensuring that the entity or entities performing the lead-based abatement work and certification under this SEP do so in



accordance with all applicable federal, state, and local laws. Respondent is responsible for ensuring that the entity or entities performing the SEP receive a copy of this CAFO and all attachments pertaining to the SEP. Respondent is responsible for any failure to complete the SEP in accordance with the applicable terms of this CAFO.

32. Within thirty (30) days of the effective date of the CAFO, and prior to beginning work on the SEP, Respondent shall send a notice to the Texas Department of State Health Services, informing the State of Texas of Respondent's intent to perform this lead-based paint abatement SEP and requesting procedural information pertaining to the performance of the SEP. A copy of this letter shall be sent to EPA at the contact listed below.

33. The SEP shall be performed in accordance with the requirements of this CAFO. If, for reasons beyond Respondent's control, it becomes impracticable or impossible for Respondent to implement the SEP described in Paragraphs 30–32, Respondent shall be permitted to propose an alternate SEP for EPA's approval. Should an alternate SEP be selected for implementation in lieu of the SEP described in Paragraphs 30–32, Respondent and EPA shall agree on a reasonable extension of the original SEP completion deadline, as provided by Paragraph 35.

34. Respondent shall spend at least One Hundred Sixty Thousand Dollars (\$160,000.00) on the SEP.

35. Respondent agrees that the SEP shall be completed within six (6) months of the effective date of this CAFO. If circumstances arise necessitating an extension of this deadline, Magnolia may submit a request to EPA in writing no later than two weeks prior to the completion deadline. EPA shall grant reasonable requests for extension or shall grant a shorter extension as is reasonable under the circumstances.

36. Within thirty (30) days of the SEP completion deadline pursuant to Paragraph 35, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 39 below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented;
- (b) Description of any problems encountered in implementation of the project and the solution thereto;
- (c) Itemized cost of goods and services used to complete the SEP;
- (d) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP and to the extent feasible, quantification of the benefits associated with the SEP and a description of how the benefits were measured or estimated; and
- (e) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

37. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

38. The SEP Completion Report shall include the statement of Respondent, through an authorized representative, signed and certifying under penalty of law the following:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

39. The SEP Completion Report shall be submitted on or before the due date specified above to:

Candace Bednar, WWPD  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

40. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include or reference language indicating that the project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

41. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is One Hundred Sixty Thousand Dollars (\$160,000.00);
- (b) That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- (g) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 30, or an alternate SEP implemented pursuant to Paragraph 33 (for the purposes of this certification the phrase "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal assistance whose performance period has not expired);
- (h) That Respondent will inquire of each entity performing any portion of the SEP whether any such entity is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and will not use any such entity to perform any portion of the SEP unless Respondent has been informed by each such entity that it is not a party to any such transaction; and
- (i) That Respondent will inquire of each recipient of services performed as part of the SEP whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and will not perform the SEP for any recipient unless Respondent has been informed by each such recipient that it/they are not a party to any such transaction.

42. Following receipt of the SEP Completion Report, EPA will notify Respondent in writing that:

- (a) Respondent has satisfactorily completed the SEP and the SEP Completion Report;
- (b) There are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent thirty (30) days to correct the

deficiencies; or

- (c) Respondent has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties in accordance with the provisions of this CAFO.

If EPA exercises option (b) above, Respondent may object in writing to the deficiency notice within ten (10) days of receiving the notice. The parties will have thirty (30) days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties in accordance with the provisions of this CAFO.

43. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount:

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - i. If the SEP has not been completed satisfactorily and timely pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of Two Hundred Thousand Dollars (\$200,000.00), minus any documented expenditures determined by EPA to be acceptable for the SEP.
  - ii. For failure to submit the SEP Completion Report within thirty (30) days of the deadline for SEP completion pursuant to Paragraph 35, Respondent shall pay a stipulated penalty, in the amount of \$250 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA (subject to the procedures of Paragraph 42).
- (c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or other resolution under this CAFO.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days

after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 15 herein.

- (e) Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

### **Effect of Settlement, Reservation of Rights, and Covenant Not to Sue**

44. Full payment of the civil penalty and compliance with all terms of this Consent Agreement in full shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint. Complainant reserves the right to take enforcement action with respect to any other violations of the TSCA or other applicable law.

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

46. Respondent certifies by the signing of this Consent Agreement that, to the best of its knowledge and belief, it is presently in compliance with all requirements of TSCA and its implementing regulations.

47. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

48. Complainant reserves the right enforce the terms and conditions of this CAFO.

49. Failure to comply with the terms and conditions set forth in Section III.C. will void the releases and covenants not to sue granted by the Agreement as provided for in Paragraphs 44–48.

### **General Provisions**

50. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

51. By signing this Consent Agreement, the undersigned representative of Complainant certifies that he or she is fully authorized to execute and enter into the terms and

conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

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

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

54. This CAFO shall apply to and be binding upon Respondent, 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 CAFO.

**WE HEREBY AGREE TO THIS:**

**For RESPONDENT  
MAGNOLIA WACO PROPERTIES, LLC  
d/b/a MAGNOLIA HOMES**

Date: 4/17/18

By:   
Signature

  
Print Name

CEO  
Title

**For COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 4/26/2018



Gregory Sullivan, Director  
Waste and Chemical Enforcement Division  
Office of Enforcement and Compliance Assurance

Date: 4/26/18



Amos Presler  
Attorney  
Office of Enforcement and Compliance Assurance



# Exhibit A

## RESPONDENT'S CHECKLIST FOR RENOVATIONS REGULATED BY THE LEAD RENOVATION, REPAIR, AND PAINTING (LRRP) RULE

## RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS REGULATED BY THE LRRP RULE

THE PURPOSE OF THIS FORM IS TO DOCUMENT COMPLIANCE WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S LEAD RENOVATION, REPAIR, AND PAINTING RULE ("LRRP RULE"), 40 C.F.R. § 745.80, *et seq.*, OR ANY APPLICABLE U.S. EPA-AUTHORIZED STATE OR TRIBAL PROGRAM REGULATING LEAD-BASED PAINT SAFE WORK PRACTICES.

### **General Project Information:**

Property Address: \_\_\_\_\_  
City State Zip

Contractor/subcontractor firm name and certification number (copy of the firm certificate must be on file with the Respondents):

\_\_\_\_\_  
Firm Name Certification Number

Assigned certified renovator name & certification number (copy of training certificate must be available on the work site and attached to this checklist):

\_\_\_\_\_  
Renovator Name Certification Number

Brief description of Renovation Project (include painted surfaces disturbed and estimated size):

Did the contractor/subcontractor obtain a written determination from a certified inspector or risk assessor that lead-based paint was not present on the components affected by the renovation?

**Yes and a copy of the determination is attached to this checklist. (Form is COMPLETE. Sign Certification on last page.)**

**No (Continue to Next Section, "Lead Testing Information")**

**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

**LEAD TESTING INFORMATION:**

Were EPA or applicable state recognized lead test kits used by certified renovator on each and every component (for example, each window to be replaced must be tested unless it is assumed to have lead-based paint) to determine whether lead was present on components affected by renovation?

Yes       N/A

Identify workers and kits used and describe components tested, sampling locations and results below. Follow the lead test kit directions completely when testing components. Document paint chip sampling using the template on the following page and attach any laboratory results.

Certified Renovator Name	Certification Number

*Attach additional sheets as needed.*

Test Kit Manufacturer and Model	Date of Testing	Component and Location Tested	Result

*Attach additional sheets as needed.*

***Note -- Each window to be replaced must be tested unless it is assumed to have lead-based paint***

**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

<b>General Information</b>	
Name of Property Owner: _____	
Address: _____	
City: _____	State: _____ Zip code: _____ Contact #: (____) ____ - _____
Email: _____	
<b>Renovation Information</b>	
Renovation Address: _____ Unit #: _____	
City: _____	State: _____ Zip code: _____
Certified Firm Name: _____	
Address: _____	
City: _____	State: _____ Zip code: _____ Contact #: (____) ____ - _____
Email: _____	
Certified Renovator Name: _____	
Date Certified ____/____/____	
<b>For each sample collected, fill out all of the following information:</b>	
Sample Identifier: _____	
Sample Collector Name: _____	
Sampling Location: _____	
Sampling site description: _____	Date of Collection: ____/____/____
Sample Dimensions (cm): _____	Calculate Sample Area (cm <sup>2</sup> ): _____
*NLLAP-recognized entity and location: _____	
Submission date: ____/____/____	Results: _____ Result Date: ____/____/____
Attach additional sheets as necessary.	
*National Lead Laboratory Accreditation Program	

Was lead-based paint determined to be present on the components affected by the renovation?

**Yes** (Continue to Next Section, "Notification, Work Practices, and Recordkeeping").

Presumed to be present on the components affected by the renovation (Continue to Next Section, "Notification, Work Practices, and Recordkeeping").

**No** (Form is COMPLETE, sign Certification on last page.)

**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

**NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING:**

(40 C.F.R. Parts §§ 745.84-745.86 or applicable state program)

Please acknowledge one of the following:

Signed and dated acknowledgments of receipt of the Renovate Right pamphlet from, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units, owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist;

**OR**

Certificates of mailing of the Renovate Right pamphlet to the following, as applicable: owners and, if not owner-occupied, adult occupants of dwelling units; owners of multi-unit housing for renovations in common areas; and owners and adult representatives of child-occupied facilities are attached to this checklist.

**OR**

Certificates of attempted delivery of the Renovate Right pamphlet to adult occupants of dwelling units or adult representatives of child-occupied facilities are attached to this checklist.

Comments on pamphlet delivery (*i.e.*, obstacles encountered and how they were addressed):

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If the Renovation Project involved a common area of a multi-unit building, was a signed statement describing the steps performed to notify all occupants of multi-unit housing of the renovation activities, to provide the Renovate Right pamphlet to all occupants, and to inform of any changes to the renovation activities, obtained and attached?

\_\_\_ **Yes**      \_\_\_ **N/A**

If the Renovation Project was performed in a child-occupied facility, was a signed statement describing the steps performed to notify all parents and guardians of children using child-occupied facilities of the renovation activities, to provide the Renovate Right pamphlet, and to provide a copy of the records showing compliance with the LRRP Rule and any dust clearance sampling reports obtained and attached?

\_\_\_ **Yes**      \_\_\_ **N/A**

Name(s) of dust sampling technician, inspector, or risk assessor, if used (attach copies of their certification to this checklist):

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**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

**NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING: continued**

If applicable, certified renovator provided training to workers on (check all that apply):

- |                                                  |                                                                    |
|--------------------------------------------------|--------------------------------------------------------------------|
| <input type="checkbox"/> Posting warning signs   | <input type="checkbox"/> Setting up plastic containment barriers   |
| <input type="checkbox"/> Maintaining containment | <input type="checkbox"/> Avoiding spread of dust to adjacent areas |
| <input type="checkbox"/> Waste handling          | <input type="checkbox"/> Post-renovation cleaning                  |

List Names of workers trained (attach a copy of any records documenting which elements were taught to each worker):

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Renovator posted signs defining work area to keep others out of renovation work area. Warning signs were posted at entrance to work area.

\_\_\_ Yes      \_\_\_ N/A

Work area contained to prevent spread of dust and debris? (Check all that apply)

(INTERIOR)

- All objects in the work area were removed or covered (interiors).
- HVAC ducts in the work area were closed and covered (interiors).
- Windows and doors in the work area were closed and sealed (interiors).
- Floor surfaces covered by plastic extending 6 feet from work area (interiors).
- Doors in the work area were closed and sealed (interiors).
- Doors that must be used in the work area were covered to allow passage but prevent spread of dust (interiors).
- Floors in the work area were covered with taped-down plastic (interiors).

(EXTERIOR)

- Windows in and within 20 feet of the work area were closed (exteriors).
- Doors in and within 20 feet of the work area were closed and sealed (exteriors).
- Ground was covered by plastic extending 10 feet from work area - plastic anchored to building and weighed down by heavy objects (exteriors).
- If necessary, vertical containment was installed if property line prevents 10 feet of plastic ground cover, or if necessary to prevent migration of dust and debris to adjacent property (exteriors).

**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

**NOTIFICATION, WORK PRACTICES, AND RECORDKEEPING: continued**

**Please acknowledge the following if applicable:**

None of the prohibited and restricted work practices was employed.

\_\_\_ Yes      \_\_\_ N/A

Waste was contained on-site and while being transported off-site.

\_\_\_ Yes      \_\_\_ N/A

Work site was properly cleaned after renovation:

\_\_\_ Yes      \_\_\_ N/A

- All chips and debris were picked up, protective sheeting misted, folded dirty side inward, and taped for removal;
- Plastic sheeting misted, folded dirty side inward, and taped for removal; and
- Work area surfaces, walls, and objects were cleaned using HEPA vacuum and/or wet-cloths or mops (interiors).

Certified renovator performed post-renovation cleaning verification. Describe results, including the number of wet and dry cloths used:

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**OR**

If dust clearance testing was performed instead of cleaning verification, the sample results were below clearance standards and a copy of the report was provided to property owners and, if not owner-occupied, adult occupants of residential dwellings or adult representatives of child-occupied facilities and posted in common areas of any multi-unit housing. A copy of the results is attached to this checklist.

\_\_\_ Yes      \_\_\_ N/A

If the renovation is an emergency renovation under the LRRP Rule, describe the nature of the emergency and document the provisions of the LRRP Rule that were not followed:

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**RESPONDENT'S LRRP CHECKLIST FOR RENOVATIONS  
REGULATED BY THE LRRP RULE**

**CONTRACTOR/SUBCONTRACTOR CERTIFICATION**

To be completed for renovations if performed by Respondent's contractor and/or subcontractor:

*I, the undersigned contractor/subcontractor, certify under penalty of law that the above information is true and complete, and do hereby certify that I have complied with all applicable requirements of the Lead Renovation, Repair, and Painting Rule ("LRRP Rule"), 40 C.F.R. § 745.80, et seq., and/or any applicable state laws or program regulating lead-based paint safe work practices, including compliance with all information distribution, notice requirements and work practice standards in performing this Renovation Project. I certify that I have provided the occupants (if any) of the Property to be Renovated, with all documentation required to be supplied under the LRRP Rule and/or state program, shall retain all records required by law for at least 3 years or longer if required by state law, and shall provide copies to EPA of all the records required to be retained by the LRRP Rule or applicable state program upon request. I have provided the Respondents with a completed copy of this Renovation Recordkeeping Checklist and all associated documentation to support its contents.*

\_\_\_\_\_  
Contractor/subcontractor Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Officer

\_\_\_\_\_  
Title

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

	)	
In re:	)	
	)	Docket No. TSCA-HQ-2018-5004
Magnolia Waco Properties, LLC d/b/a	)	
	)	
Magnolia Homes	)	
	)	

**FINAL ORDER**

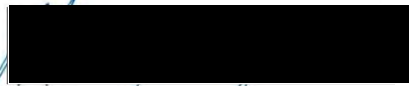
Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, and section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.<sup>1</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: 6/4/2018

  
 \_\_\_\_\_  
 Mary Kay Lynch  
 Environmental Appeals Judge

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<sup>1</sup> The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of Magnolia Waco Properties, LLC d/b/a Magnolia Homes, Docket No. TSCA-HQ-2018-5004, were sent to the following persons in the manner indicated:

**By E-mail:**

For Respondent Magnolia Waco Properties, LLC d/b/a Magnolia Homes:

Joshua Frank, Esq.  
Thomas Jackson, Esq.  
Baker Botts L.L.P.  
The Warner  
1299 Pennsylvania Ave., NW  
Washington, DC 20004  
Email: Joshua.Frank@bakerbotts.com; Thomas.Jackson@bakerbotts.com

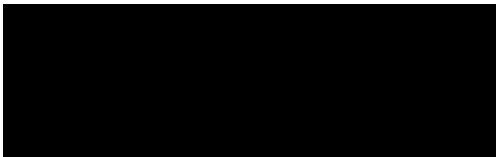
For U.S. Environmental Protection Agency:

Rosemarie Kelley, Director  
Amos Presler  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
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Washington, DC 20460  
Email: Kelley.Rosemarie@epa.gov;  
Presler.Amos@epa.gov

Raymond C. Bosch  
Britt Bieri  
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Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Mail Code 1900R  
Washington, DC 20460  
Email: OALJfiling@epa.gov;  
Wright.Michaelb@epa.gov

Dated: Jun 04 2018



Annette Duncan  
Administrative Specialist