

1 BRIAN P. RIEDEL
2 Acting Supervising Attorney
3 U.S. Environmental Protection Agency, Region 9
4 75 Hawthorne Street (ORC-2)
5 San Francisco, CA 94105
6 (415) 972-3924
7 riedel.brian@epa.gov

8 GRETCHEN BUSTERUD
9 Acting Regional Counsel
10 United States Environmental Protection Agency, Region IX
11
12 Attorneys for Complainant

13 **UNITED STATES**
14 **ENVIRONMENTAL PROTECTION AGENCY**
15 **REGION 9**

16 **In the Matter of:**

Docket No. TSCA-09-2022-0050

17 **OFM Corporation dba Alward Construction**
18 **Respondent.**

CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

19 **CONSENT AGREEMENT**

20 The United States Environmental Protection Agency (“EPA”), Region 9, and OFM
21 Corporation dba Alward Construction (“Respondent”) agree to settle this matter and consent to
22 the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously
23 commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

24 **I. AUTHORITY, JURISDICTION AND PARTIES**

25 1. This is a civil administrative penalty action brought against Respondent pursuant to
26 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
27 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Section 402 of TSCA, 15

28 In the Matter of: OFM Corporation dba Alward Construction
Consent Agreement and Final Order 1

1 U.S.C. § 2682, and their implementing rules issued at 40 C.F.R. Part 745, Subpart E –
2 Residential Property Renovation (“Subpart E”).

3 2. Complainant is the Manager, Toxics Section, Enforcement & Compliance Assurance
4 Division, EPA, Region 9, who has been duly delegated the authority to bring and settle this
5 action under TSCA.

6
7 3. Respondent is a California corporation located in Danville, California.

8 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

9 4. Subpart E applies to all renovations performed for compensation in target housing and
10 child-occupied facilities, unless the renovation qualifies for the exception involving a lead-free
11 determination identified at 40 C.F.R. § 745.82(a).

12
13 5. Pursuant to Section 402(c) of TSCA, 15 U.S.C. § 2682(c), Subpart E sets forth
14 requirements for certification of firms and individuals engaged in lead-based paint activities and
15 work practice standards for renovation, repair and painting activities in target housing.

16
17 6. No firm may perform, offer, or claim to perform renovations without certification from
18 EPA under §745.89 in target housing. 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

19 7. Firms performing renovations must ensure that a certified renovator is assigned to each
20 renovation performed by the firm and discharges all of the certified renovator responsibilities
21 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

22
23 8. Before beginning the renovation, firms performing renovations must, among other things,
24 post signs that warn occupants and other persons not involved in renovation activities to remain
25 outside of the work area. 40 C.F.R. § 745.85(a)(1).

26 9. Firms performing renovations must retain documentation of compliance with the
27

1 requirements of § 745.85, including documentation that a certified renovator was assigned to the
2 project; that the certified renovator provided on-the-job training for workers used on the project;
3 that the certified renovator performed or directed workers who performed all of the work practice
4 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
5 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

7 10. “Target housing” means any housing constructed prior to 1978, except housing for the
8 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
9 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
10 U.S.C. § 2681.

12 11. “Renovation” means the modification of any existing structure, or portion thereof, that
13 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
14 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the
15 removal, modification or repair of painted surfaces or painted components (e.g., modification of
16 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
17 scraping, or other such activities that may generate paint dust)); the removal of building
18 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
19 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
20 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
21 term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

24 12. “Painted surface” means a component surface covered in whole or in part with paint or
25 other surface coatings. 40 C.F.R. § 745.83.

26 13. “Renovator” means any individual who either performs or directs workers who perform
27

1 renovations. A certified renovator is a renovator who has successfully completed a renovator
2 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.

3 14. “Person” means any natural or judicial person including any individual, corporation,
4 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
5 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R.
6 § 745.83.

7
8 15. “Firm” means a company, partnership, corporation, sole proprietorship, or individual
9 doing business, association, or other business entity; a Federal, State, Tribal, or local government
10 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

11
12 16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
13 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
14 Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
15 \$43,611 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
16 after November 2, 2015, where penalties are assessed on or after January 12, 2022.

17 **III. ALLEGATIONS**

18
19 17. At all times relevant to this CAFO, Respondent was a “person,” as that term is defined at
20 40 C.F.R. § 745.83.

21
22 18. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at 40
23 C.F.R. § 745.83.

24
25 19. At all times relevant to this CAFO, the properties at 2743 Alcatraz Avenue, Berkeley;
26 3827 Clay Street, San Francisco, California (“Clay Property”); 5715 MacCall Street, Oakland,
27 California (“MacCall Property”); 634 Mandana Boulevard, Oakland, California (“Mandana

1 Property”); and 6122 Lawton Avenue, Oakland, California (“Lawton Property”)(collectively,
2 “Target Housing Properties”) were “target housing,” as that term is defined at Section 401 of
3 TSCA, 15 U.S.C. § 2681.

4
5 20. In 2017 and/or 2018, Respondent performed renovations (“Renovations”) at each of the
6 Target Housing Properties.

7 21. Each of the Renovations at each of the Target Housing Properties was a “renovation,” as
8 that term is defined at 40 C.F.R. § 745.83.

9
10 CLAIM 1

11 22. Paragraphs 1-21 of this CAFO are realleged and are incorporated herein by reference.

12 23. Respondent performed Renovations at each of the Target Housing Properties without
13 firm certification pursuant to 40 C.F.R. § 745.89.

14 24. Respondent's performance of the Renovations at each of the Target Housing Properties
15 without firm certification pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of
16 TSCA, 15 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

17
18 CLAIMS 2-6

19 25. Paragraphs 1-24 of this CAFO are realleged and are incorporated herein by reference.

20 26. Respondent did not ensure that certified renovator(s) discharged all of the certified
21 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the
22 Target Housing Properties.

23
24 27. Respondent's failures to ensure that certified renovator(s) discharged all of the certified
25 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the
26

1 Target Housing Properties constitute five violations of Section 409 of TSCA, 15 U.S.C. § 2689,
2 and 40 C.F.R. § 745.89(d)(2).

3 CLAIMS 7-10

4 28. Paragraphs 1-27 of this CAFO are realleged and are incorporated herein by reference.

5
6 29. Before performing each Renovation at the Clay Property, MacCall Property, Mandana
7 Property and Lawton Property, Respondent failed to post signs that warn occupants and other
8 persons not involved in renovation activities to remain outside of the respective work areas.

9
10 30. The failures of Respondent to post signs (before performing each Renovation at the Clay
11 Property, MacCall Property, Mandana Property and Lawton Property) that warn occupants and
12 other persons not involved in renovation activities to remain outside of the respective work areas
13 constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
14 § 745.85(a)(1).

15 CLAIMS 11-30

16 31. Paragraphs 1-30 of this CAFO are realleged and are incorporated herein by reference.

17
18 32. With respect to the Renovations at the Target Housing Properties, Respondent did not
19 retain documentation that certified renovator(s) were assigned to the project; that certified
20 renovator(s) provided on-the-job training for workers used; that certified renovator(s) performed
21 or directed workers who performed all of the work practice tasks described in § 745.85(a); and
22 that certified renovator(s) performed the post-renovation cleaning verifications described in
23 § 745.85(b) for the Renovations performed at each of the Target Housing Properties.

24
25 33. Respondent's failures to retain documentation that certified renovator(s) were assigned to
26 the projects; that certified renovator(s) provided on-the-job training for workers used; that
27

1 certified renovator(s) performed or directed workers who performed all of the work practice
2 tasks described in § 745.85(a); and that certified renovator(s) performed the post-renovation
3 cleaning verification described in § 745.85(b) for the Renovations performed at each of the
4 Target Housing Properties constitute 20 violations of Section 409 of TSCA, 15 U.S.C. § 2689,
5 and 40 C.F.R. § 745.86(b)(6).

7 **IV. RESPONDENT'S ADMISSIONS**

8 34. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
9 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
10 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
11 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
12 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
13 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
14 Final Order contained in this CAFO.

16 **V. CIVIL ADMINISTRATIVE PENALTY**

17 35. Respondent agrees to the assessment of a penalty in the amount of EIGHTEEN
18 THOUSAND DOLLARS (\$18,000) ("Assessed Penalty") as final settlement of the civil claims
19 against Respondent arising under TSCA as alleged in Section III of this CAFO.
20

21 36. Respondent agrees to pay the Assessed Penalty within thirty (30) days of the Effective
22 Date of this CAFO.
23

24 37. Respondent agrees to pay the Assessed Penalty using any method, or combination of
25 methods, provided on the website <https://www.epa.gov/financial/makepayment>, and identifying
26 the payment with "Docket No. TSCA-09-2022-0050." Within 24 hours of payment of the
27

1 Assessed Penalty, Respondent agrees to send proof of payment to Chris Rollins at
2 rollins.christopher@epa.gov and the EPA Region 9 Regional Hearing Clerk at
3 R9HearingClerk@epa.gov. “Proof of payment” means a copy of the check, confirmation of
4 credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and
5 any other information required to demonstrate the payment of the Assessed Payment has been
6 made in accordance with this CAFO. The proof of payment shall be identified with “Docket No.
7 TSCA-09-2022-0050.”
8

9 38. Payment of the above civil administrative penalty shall not be used by Respondent or any
10 other person as a tax deduction from Respondent’s federal, state, or local taxes.
11

12 39. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
13 35 by the deadline specified in Paragraph 36, then Respondent shall pay to EPA a stipulated
14 penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue
15 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
16 become due and payable upon written request by EPA. In addition, failure to pay the civil
17 administrative penalty by the deadline specified in Paragraph 36 may lead to any or all of the
18 following actions:
19

20 a. The debt being referred to a credit reporting agency, a collection agency, or to the
21 Department of Justice for filing of a collection action in the appropriate United States District
22 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
23 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
24

25 b. The debt being collected by administrative offset (i.e., the withholding of money payable
26 by the United States to, or held by the United States for, a person to satisfy the debt the person
27

1 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
2 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

3 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
4 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
5 or funds. 40 C.F.R. § 13.17.

7 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
8 penalties charges, and administrative costs will be assessed against the outstanding amount that
9 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
10 deadline specified in Paragraph 36. Interest will be assessed at an annual rate that is equal to the
11 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
12 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
13 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
14 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
15 Administrative costs for handling and collecting Respondent's overdue debt will be based on
16 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
17 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
18 Department of Justice, the Internal Revenue Service), that department or agency may
19 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
20 collecting Respondent's overdue debt.
21
22
23

24 **VI. RESPONDENT'S CERTIFICATION**

25 40. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
26 federal regulations promulgated at Subpart E.
27

1 **VII. RETENTION OF RIGHTS**

2 41. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent’s liability
3 for federal civil penalties for the violations and facts specifically alleged in Section III of this
4 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
5 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
6 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
7 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
8 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
9 address any violation of this CAFO or any violation not specifically alleged in Section III of this
10 CAFO.
11
12

13 42. This CAFO does not exempt, relieve, modify, or affect in any way Respondent’s duty to
14 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
15 permits.
16

17 **VIII. ATTORNEYS’ FEES AND COSTS**

18 43. Each party shall bear its own attorneys’ fees, costs, and disbursements incurred in this
19 proceeding.
20

21 **IX. EFFECTIVE DATE**

22 44. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
23 on the date that the final order contained in this CAFO, having been approved and issued by
24 either the Regional Judicial Officer or Regional Administrator, is filed.
25

26 **X. BINDING EFFECT**

27 45. The undersigned representative of Complainant and the undersigned representative of

1 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
2 of this CAFO and to bind the party he or she represents to this CAFO. This CAFO may be signed
3 in counterparts, and its validity shall not be challenged on that basis.
4

5 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its
6 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
7 and assigns.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 The foregoing Consent Agreement In the Matter of: OFM Corporation dba Alward Construction,
2 Docket No. TSCA-09-2022-0050 is hereby stipulated, agreed, and approved for entry:

3 FOR RESPONDENT, OFM CORPORATION DBA ALWARD CONSTRUCTION
4

5 _____
DATE

Name

Title

OFM Corporation dba Alward Construction

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 In the Matter of: OFM Corporation dba Alward Construction
Consent Agreement and Final Order 12

1 The foregoing Consent Agreement In the Matter of: OFM Corporation dba Alward Construction,
2 Docket No. TSCA-09-2022-0050 is hereby stipulated, agreed, and approved for entry:

3
4 FOR COMPLAINANT:

5
6 _____
DATE

Matt Salazar
7 Manager, Toxics Section
8 Enforcement & Compliance Assurance Division
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 In the Matter of: OFM Corporation dba Alward Construction
Consent Agreement and Final Order 13

1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2022-0050) be
4 entered, and that Respondent shall pay a civil administrative penalty in the amount of
5 EIGHTEEN THOUSAND DOLLARS (\$18,000) and comply with the terms and conditions set
6 forth in the Consent Agreement. This Consent Agreement and Final Order shall become
7 effective upon filing.
8

9
10
11
12 _____
DATE

13 _____
STEVEN L. JAWGIEL
14 Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 9
15
16
17
18
19
20
21
22
23
24
25
26
27

28 In the Matter of: OFM Corporation dba Alward Construction
Consent Agreement and Final Order 14