



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007

AUG - 2 2013

REGIONAL HEARING
CLERK

2013 AUG - 2 P 12:03

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jose Luis Hernandez, Owner
L. Hernandez Painting, d/b/a Hernandez L. Painting
43 Harvard Street
Hempstead, New York 11550

Re: In the Matter of **L. Hernandez Painting, d/b/a Hernandez L. Painting**
Docket No. TSCA 02-2013-9267

Dear Mr. Hernandez:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the schedule on page 5 of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,


Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
Water and General Law Branch/Waste and Toxic Substance Branch

Enclosures

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
: In the Matter of :
: :
: **L. Hernandez Painting,** :
: **d/b/a Hernandez L. Painting** :
: Respondent :
: :
: :
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act :
: :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2013-9267

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 AUG -2 P 12:03
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. Section 22.13(b) that where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. Section 22.18(b)(2) and (3).

On March 28, 2013, the Chief of the Pesticides and Toxic Substances Branch of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA") issued an Opportunity to Show Cause Letter ("SCL") to

L. Hernandez Painting, d/b/a Hernandez L. Painting (hereinafter “Hernandez L. Painting or Respondent”). The SCL alleged that Respondent had violated Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated pursuant to TSCA, Section 402: Requirements for Residential Property Renovation , 15 U.S.C. § 2682, set forth at 40 C.F.R. Part 745, Subpart E, relating to lead-based paint ("LBP") and the Renovation, Repair and Painting (“RRP”) Rule.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. Section 22.13(b) and 40 C.F.R. Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is L. Hernandez Painting, d/b/a Hernandez L. Painting.
2. Respondent’s primary place of business is located at 43 Harvard Street, Hempstead, New York 11550.
3. On or about June 11, 2012, a citizen tip/complaint was submitted to the EPA Region 2 Lead Team alleging that Respondent was not complying with the EPA RRP Rule while conducting renovations at target housing located at 15 Meadowbrook Road, Syosset, New York (the “Property”).
4. On June 19, 2012, EPA sent an Information Request Letter (“IRL”) to Respondent as part of EPA’s TSCA investigation of Respondent’s renovation activities at the Property.
5. On or about July 19, 2012, Respondent submitted a partial response to EPA’s IRL.

6. On March 28, 2013, EPA issued a Show Cause Letter to Respondent alleging violations of the RRP Rule involving work at the Property.

7. Based in part on Respondent's IRL response, EPA determined that Respondent, as a firm that performs, offers or claims to perform renovations for compensation, failed to obtain initial certification from EPA under 40 C.F.R. §745.89(a), as required by 40 CFR § 745.81(a)(2)(ii).

8. Based in part on Respondent's IRL response, EPA determined that Respondent had failed to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i).

9. Based in part on Respondent's IRL response, EPA determined that Respondent, as a firm that performs renovations, failed to ensure that a renovator was assigned under 40 C.F.R. §745.89(d)(2), as required by 40 C.F.R. §745.81(a)(3).

10. Respondent, as a firm that engages in renovations which may involve lead-based paint, is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E.

11. On April 25, 2013, EPA and Respondent held an informal settlement conference at Respondent's request. As a result of the informal settlement conference, the parties agreed to settle this matter by entering into this Consent Agreement.

12. As a result of the informal settlement conference, Respondent has also agreed that its owner, Mr. Jose L. Hernandez, will register for and complete individual renovator training with an EPA-accredited training provider. Respondent has further agreed to (1) submit to EPA a copy of the registration for Mr. Jose L. Hernandez to take the individual renovator training,

and, at the completion of said training, (2) submit to EPA a copy of the certificate of completion.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the RRP regulations codified at 40 C.F.R. § 745, Subpart E.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations described in the “Findings of Fact and Conclusions of Law” section, above; (b) neither admits nor denies the specific factual determinations contained in the “Findings of Fact and Conclusions of Law” section, above; and (c) neither admits nor denies the determinations set forth in the “Findings of Fact and Conclusions of Law” section, above.
3. Respondent shall pay, by cashier’s or certified check, a civil penalty in the amount of **ONE THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$1,560)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street,
New York, NY 10045**
- 3) Account: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”
- 6) **L. Hernandez Painting, d/b/a Hernandez L. Painting**
- 7) Docket Number TSCA-02-2013-9267

Payment must be received at the above address (or account of EPA) in accordance to the following schedule:

The first payment amount of \$520.00 shall be owing and due on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the dates by which payments must be received shall hereinafter be referred to as the “due dates”). The second payment amount of \$520.00 shall be owing and due on or before 90 calendar days after the date of the signature of the Final Order at the end of this document. The third and final payment amount of \$520.00 shall be owing and due on or before 135 calendar days after the date of the signature of the Final Order at the end of this document. Promptly after payments have been made, Respondent shall send copies of these payments or furnish reasonable proof that such payments have been made to both:

Melva J. Hayden, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

- a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.
- b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claim described in the Findings of Fact and Conclusions of Law set forth above.

5. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

7. Respondent consents to the issuance of the accompanying Final Order.

8. Respondent agrees that all terms of settlement are set forth herein.

9. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

10. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on the determinations contained in the "Findings of Fact and Conclusions of Law" section. Respondent further waives its right otherwise to contest all such determinations.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

13. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

14. Each party shall bear its own costs and fees in this matter.

15. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of L. Hernandez Painting, d/b/a Hernandez L. Painting
Docket Number TSCA-02-2013-9267

Hernandez L. Painting

RESPONDENT:

BY:

[Signature] NYDL#838883069

NAME:

Jose Luis Hernandez
(PLEASE PRINT)

TITLE:

OWNER

DATE:

07/18/13

07/18/13

JOSE L. CARRANZA
Notary Public, State of New York
No. 4908459
Qualified in Nassau County
Commission Expires October 19, 2013

COMPLAINANT:

[Signature]

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

DATE:

JULY 31, 2013

In the Matter of L. Hernandez Painting, d/b/a Hernandez L. Painting
Docket Number TSCA-02-2013-9267

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of L. Hernandez Painting, d/b/a Hernandez L. Painting, bearing Docket Number TSCA-02-2013-9267. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

DATE: August 1, 2013

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

In the Matter of L. Hernandez Painting, d/b/a Hernandez L. Painting
Docket Number TSCA-02-2013-9267

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Jose Luis Hernandez, Owner
L. Hernandez Painting, d/b/a Hernandez L. Painting
43 Harvard Street
Hempstead, New York 11550

Dated: AUG - 2 2013
New York, New York

Mildred N. Bag