

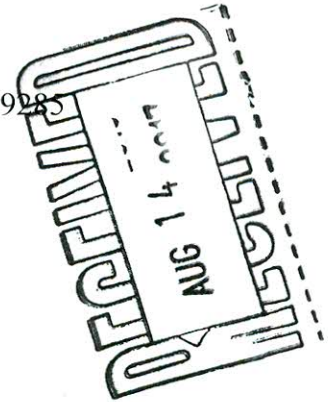
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

2017 SEP 19 21 8 00  
RECEIVED  
REGIONAL OFFICE  
EPA REGION 2

-----X  
: In the Matter of :  
: :  
: **Brian A. Nash dba** :  
: **Quality Custom Construction** :  
: :  
: Respondents :  
: :  
: Proceeding under Section 16(a) of :  
: the Toxic Substances Control Act :  
: :  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2017-9285



PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 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. §§ 22.18(b)(2) and (3).

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. §§ 22.13(b), 22.18(b)(2) and

22.18(b)(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 Brian A. Nash dba Quality Custom Construction (“Quality” or “Respondent”).
2. Respondent’s primary place of business is located at 8 Cookingham Road, Poughkeepsie, New York 12601.
3. Respondent is engaged in the business of renovation and painting.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745.
6. On or about September 18, 2015, the United States Environmental Protection Agency, Region 2 (“EPA”) received a referral from the Dutchess County Department of Health (“DC-DOH”) regarding renovations conducted by Respondent at target housing, as that term is defined by TSCA § 401(17), 15 U.S.C. § 2681(17), where a child of 2 years old with elevated blood lead level (“EBLL”) resided, located at 159 Fishkill Avenue, Beacon, New York (the “Property”).
7. On or about September 18, 2015, EPA sent a letter to DC-DOH pursuant to New York State’s Freedom of Information Law (“FOIL”) to request access to the inspection report and other documents relating to the referral.
8. On October 8, 2015, EPA sent an Information Request Letter (“IRL”) to Respondent as part of EPA’s investigation of Respondent’s work practice standards while conducting renovations at the Property.

9. On November 13, 2015, EPA received Respondent's response to EPA's IRL, dated November 10, 2015.

10. Based in part on Respondent's response to the IRL and the DC-DOH referral information, EPA determined that the renovation work performed by Respondent at the Property from approximately May 28, 2015 through June 30, 2015 is subject to the requirements set forth at 40 C.F.R. Part 745, Subpart E (the "Renovation, Repair and Painting (RRP) Rule").

11. Based in part on Respondent's response to the IRL, EPA determined that Respondent had performed renovations at the Property without first obtaining an initial firm certification from EPA, as required by 40 C.F.R. § 745.85(a).

12. EPA further determined that Respondent had failed to establish and maintain records, as required by 40 C.F.R. § 745.87(b).

13. EPA further determined that Respondent failed to provide to the owner of the residential property the Renovate Right pamphlet as required 40 C.F.R. §745.84(a)(1).

14. EPA further determined that Respondent failed to post warning signs as required by 40 C.F.R. § 745.85(a)(1).

15. EPA further determined that Respondent failed to cover the ground with plastic sheeting or other impermeable material to collect falling paint debris, as required by 40 C.F.R. §745.85(a)(2)(ii)(C).

16. EPA further determined that Respondent failed to perform a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(2).

17. On May 16, 2017 Respondent submitted financial information and documentation regarding its financial condition and inability to pay the proposed penalty.

18. On May 17, 2017, EPA and Respondent held an informal pre-filing settlement conference at Respondent's request to discuss EPA's findings with regard to Respondent's failures to comply with TSCA and the RRP Rule during and after the renovation at the Property.

19. Respondent obtained its initial RRP Firm certification on July 18, 2017, EPA Certification No. NAT-F178161-1 (exp. August 2, 2022).

20. As a result of the informal settlement conference, the parties agreed to enter into this Consent Agreement.

#### 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. 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; and (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

2. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

3. Respondent certifies that it is currently in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745.

4. Respondent certifies that:

*The information and documentation it submitted to EPA on May 10, 2017 and May 16, 2017, regarding Respondent's financial condition is accurate, complete, and not*

*misleading. EPA has relied on the accuracy of the information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant [EPA] retains the right to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation and/or representations made to Complainant [EPA] regarding Respondent's inability to pay is false or, in any material respect, inaccurate.*

5. Respondent shall pay, by cashier's or certified check or electronic fund transfer ("EFT"), a civil penalty in the amount of **TWO THOUSAND NINE HUNDRED FIFTY DOLLARS (\$2,950)** due on or before **30 calendar days** from the date of signature of the Final Order at the end of this document.

6. Payment must be received at the address listed in Paragraph 7, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which such payment must be received shall hereafter be referred to as the "due date").

a. Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, 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 or other appropriate action.

b. Further, if a payment is not received on or before its 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.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

7. If a payment is made by cashier's or certified check, each such payment shall be payable to the "Treasurer of the United States of America." Each check shall be identified with a notation of the name and docket number of this case, as 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, if Respondent chooses to pay by electronic fund transfer ("EFT"), 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 Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read "**D68010727  
Environmental Protection Agency**"
- 6) Name of Respondents: Brian A. Nash dba **Quality Custom Construction**
- 7) Case Docket Number TSCA-02-2017-9285

8. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Jerry A. Somma  
Life Scientist  
Pesticides and Toxic Substances Branch – Lead Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
2890 Woodbridge Avenue – Building 205  
Edison, New Jersey 08837

and

Melva J. Hayden, Esquire  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Brian A. Nash dba Quality Custom Construction  
8 Cookingham Road  
Poughkeepsie, New York 12601

9. The civil penalties and any stipulated penalties provided for herein are “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

10. 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 claims described in the Findings of Fact and Conclusions of Law set forth above.

11. Full payment of the penalty described in paragraph 4 shall only resolve Respondent’s liability for federal civil penalties for the violations and facts described in paragraphs 10 through 16 in the Findings of Facts and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.

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

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

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

15. 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.

16. 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 this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

17. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

18. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

19. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

20. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

21. Each party hereto agrees to bear its own costs and fees in this matter.

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



In the Matter of Brian A. Nash dba Quality Custom Construction  
Docket Number TSCA-02-2017-9285

**Brian A. Nash dba Quality Custom Construction**

RESPONDENT: BY: Brian A Nash  
NAME: Brian A Nash  
(PLEASE PRINT)  
TITLE: owner  
DATE: 9/1/17

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

SEP 13 2017  
DATE: \_\_\_\_\_

In the Matter of Brian A. Nash dba Quality Custom Construction  
Docket Number TSCA-02-2017-9285

### 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 Brian A. Nash dba Quality Custom Construction, bearing Docket Number TSCA-02-2017-9285. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing 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: Helen Ferrara 9/14/2017

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

In the Matter of Brian A. Nash dba Quality Custom Construction  
Docket Number TSCA-02-2017-9285

**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, 16<sup>th</sup> Floor  
New York, New York 10007-1866

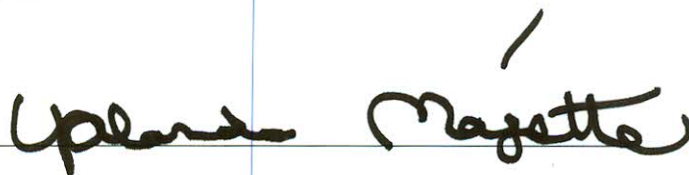
Copy by Certified Mail Return Receipt Requested:

Brian A. Nash dba Quality Custom Construction  
8 Cookingham Road  
Poughkeepsie, NY 12601

Donald J. Lambiase, Esquire  
Murphy & Lambiase, PLLC  
Attorneys at Law  
26 Scotchtown Avenue  
Goshen, New York 10924

**SEP 19 2017**

Dated: \_\_\_\_\_  
New York, New York

A handwritten signature in black ink, appearing to read "Upland Magette", is written over a horizontal line.