



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
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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,

