



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 23 2018

REPLY TO THE ATTENTION OF:
LC-17J

Mr. Gilberto Peralta
Owner
Castillo Painting and Remodeling, Inc. dba
Peralta Painting and Remodeling
1141 North Latrobe Avenue
Chicago, Illinois 60651

Consent Agreement and Final Order In the Matter of:
Castillo Painting and Remodeling Inc. dba
Peralta Painting and Remodeling **TSCA-05-2018-0011**

Dear Mr. Peralta:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on July 23, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,300.00 is to be paid in the manner described in paragraphs 44 and 45. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

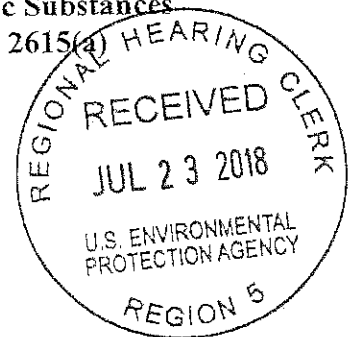
A handwritten signature in cursive script, appearing to read "Pamela Grace".

for Pamela Grace
Pesticides and Toxic Compliance Section
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2018-0011
)
Castillo Painting and Remodeling, Inc.) Proceeding to Assess a Civil Penalty Under
dba Peralta Painting and Remodeling,) Section 16(a) of the Toxic Substances
Chicago, Illinois,) Control Act, 15 U.S.C. § 2615(a)
)
Respondent.)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Castillo Painting and Remodeling, Inc., a corporation doing business as Peralta Painting and Remodeling in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional and factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under age six; at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of

childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. *See* 42 U.S.C. § 4851.

10. Section 1021 of Title X amended TSCA by adding Sections 401-12, entitled Lead Exposure Reduction, at 15 U.S.C. §§ 2681-92.

11. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair, and Painting Program Rule (RRP Rule).

12. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Part 745, Subpart E applicable to renovations of target housing performed for compensation.

13. 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

14. 40 C.F.R. § 745.83 defines “renovation” to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. Part 745 (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface

restoration, window repair, and surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

15. 40 C.F.R. § 745.83 defines “renovator” to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

16. 40 C.F.R. § 745.103 defines “residential dwelling” to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

17. 40 C.F.R. § 745.103 defines “target housing” to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

18. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. The Administrator of EPA may assess a civil penalty of up to \$38,892 for each violation of Section 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

General Allegations

20. Complainant incorporates paragraphs 1 through 19 of this CAFO as if set forth in this paragraph.

21. At all times relevant to this CAFO, Respondent was a firm doing business in Illinois. Respondent was therefore a “firm,” as defined at 40 C.F.R. § 745.83, at all times relevant to this CAFO.

22. On October 30, 2017, a representative of EPA conducted an inspection of Respondent to monitor Respondent’s compliance with TSCA and 40 C.F.R. Part 745.

23. Between October 27, 2017 and December 10, 2017, Respondent performed, or directed subcontractors to perform for compensation, modifications at 133 South Grove Avenue, Oak Park, Illinois (the Oak Park property), a residential dwelling built in 1889. In particular, the Respondent and its subcontractors, disturbed and removed painted surfaces and components and generated paint dust and debris at the Oak Park property by scraping, priming, and painting the Oak Park property.

24. The Oak Park property is “target housing” as defined at 40 C.F.R. § 745.103.

25. Respondent’s contracted work at the Oak Park property from October 27, 2017 to December 10, 2017, was a “renovation” as defined at 40 C.F.R. § 745.83.

26. From October 27, 2017 to December 10, 2017, Respondent was a “renovator” as defined at 40 C.F.R. § 745.83.

Count I – Failure to obtain initial certification from EPA before performing, offering or claiming to perform renovations for compensation

27. Complainant incorporates paragraphs 1 through 26 of this CAFO as if set forth in this paragraph.

28. 40 C.F.R. § 745.81(a)(2)(ii) provides that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

29. On October 30, 2017, Respondent performed the renovation activities described in paragraph 23.

30. Respondent’s failure to be certified as a firm, under 40 C.F.R. § 745.89, before the renovation referred to in paragraph 23 constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and 15 U.S.C. § 2689.

Count II – Failure to take extra precautions in containing the work area to ensure that dust and debris from the renovation did not migrate to adjacent properties

31. Complainant incorporates paragraphs 1 through 26 of this CAFO as if set forth in this paragraph.

32. 40 C.F.R. § 745.85(a)(2)(ii)(D) requires the firm to erect vertical containment or to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties.

33. On October 30, 2017, Respondent failed to erect vertical containment or take extra precautions in containing the work area to ensure that dust and debris from the Oak Park property renovation did not contaminate adjacent buildings or migrate to adjacent properties during the renovation.

34. For the renovation referenced in paragraph 23, Respondent's failure to erect vertical containment or take extra precautions in containing the work to ensure that dust and debris from the renovation did not contaminate adjacent buildings or migrate to adjacent properties violated 40 C.F.R. § 745.85(a)(2)(ii)(D) and 15 U.S.C. § 2689.

Count III – Failure to collect all paint chips and debris and seal material in a heavy-duty bag without dispersing any of it

35. Complainant incorporates paragraphs 1 through 26 of this CAFO as if set forth in this paragraph.

36. 40 C.F.R. § 745.85(a)(5)(i)(A) requires the firm performing the renovation to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it.

37. On October 30, 2017, Respondent failed to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, during the renovation described in paragraph 23.

38. For the renovation referenced in paragraph 23, Respondent's failure to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it violated 40 C.F.R. § 745.85(a)(5)(i)(A) and 15 U.S.C. § 2689.

Count IV – Failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation

39. Complainant incorporates paragraphs 1 through 26 of this CAFO as if set forth in this paragraph.

40. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires the firm to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

41. For the renovation referenced in paragraph 23, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces or a sufficient distance to collect falling paint debris, and the property line did not prevent 10 feet of such ground covering.

42. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces or a sufficient distance to collect falling paint debris, unless the property line prevents 10 feet of such ground covering violates 40 C.F.R. § 745.85(a)(2)(ii)(C) and 15 U.S.C. § 2689.

Civil Penalty

43. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$1,300. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as

justice may require. Complainant also considered 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*, Revised April 5, 2013.

44. Within 30 days after the effective date of this CAFO, Respondent must pay the \$1,300 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: the case title ("In the Matter of Castillo Painting and Remodeling, Inc. dba Peralta Painting and Remodeling,") and the docket number of this CAFO.

45. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 44. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

46. This civil penalty is not deductible for federal tax purposes.

47. If Respondent does not timely pay the civil penalty, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

48. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

49. Pursuant to 40 C.F.R. § 22.5(b)(2), the parties consent to service of this CAFO by email at the following email addresses: peachey.robert@epa.gov (for Complainant) and gil@peraltapainting.com (for Respondent). See 40 C.F.R. § 22.5-6. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

50. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

51. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

52. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

53. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

54. The terms of this CAFO bind Respondent and its successors and assigns.

55. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

56. Each party agrees to bear its own costs and attorney's fees in this action.

57. This CAFO constitutes the entire agreement between the parties.

58. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

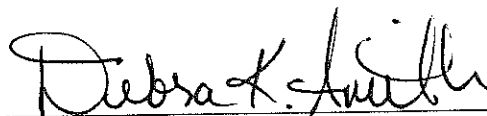
In the Matter of Castillo Painting and Remodeling, Inc. dba Peralta Painting and Remodeling

Docket No. TSCA-05-2018-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

7/19/18
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Castillo Painting and Remodeling, Inc. dba
Peralta Painting and Remodeling

Docket Number: TSCA-05-2018-0011

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on July 23, 2018, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Gilberto Peralta, Owner
Castillo Painting and Remodeling, Inc. dba
Peralta Painting and Remodeling
1141 North Latrobe Avenue
Chicago, Illinois 60651

Copy by E-mail to
Attorney for Complainant:

Robert M. Peachey
peachey.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

July 23, 2018

L. Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7614 2870 0001 9580 6569