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U.S. EPA - Region 09

8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION 9

10 **In the Matter of:**

11 **Montgomery-Sansome, LP**

12 **Respondent.**

Docket No. TSCA-09-2018-0004

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

14 **CONSENT AGREEMENT**

15 The United States Environmental Protection Agency (“EPA”), Region 9, and
16 Montgomery-Sansome, LP (“Respondent”) agree to settle this matter and consent to the entry of
17 this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and
18 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
19

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

21 1. This is a civil administrative penalty action brought against Respondent pursuant to
22 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
23 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of
24 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing rules issued at 40 C.F.R. Part 745,
25 Subpart E – Residential Property Renovation (“Subpart E”).
26
27

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1 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
2 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
3 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
4 term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.
5

6 8. “Painted surface” means a component surface covered in whole or in part with paint or
7 other surface coatings. 40 C.F.R. § 745.83.

8 9. “Renovator” means any individual who either performs or directs workers who perform
9 renovations. A certified renovator is a renovator who has successfully completed a renovator
10 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.
11

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

16 11. “Firm” means a company, partnership, corporation, sole proprietorship, or individual
17 doing business, association, or other business entity; a Federal, State, Tribal, or local government
18 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

19 12. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead Hazard
20 Information for Families, Child Care Providers and Schools,” developed under Section 406(a) of
21 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet
22 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40
23 C.F.R. § 745.83.
24

25 13. No firm may perform, offer, or claim to perform renovations without certification from
26
27

1 EPA under §745.89 in target housing, unless the renovation qualifies for the exception involving
2 a lead-free determination identified at § 745.82(a). 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

3 14. No more than 60 days before beginning renovation activities in any residential dwelling
4 unit of target housing, the firm performing the renovation must provide the owner of the
5 unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 745.83, and either obtain from the
6 owner a written acknowledgment that the owner has received the “pamphlet” or obtain a
7 certificate of mailing the “pamphlet” at least 7 days prior to the renovation. 40 C.F.R.
8 § 745.84(a)(1).
9

10 15. Firms performing renovations must retain documentation of compliance with the
11 requirements of § 745.85, including documentation that a certified renovator was assigned to the
12 project; that the certified renovator provided on-the-job training for workers used on the project;
13 that the certified renovator performed or directed workers who performed all of the work practice
14 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
15 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).
16
17

18 16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
19 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
20 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
21 \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
22 after January 12, 2009 but before November 2, 2015.
23

24 17. At all times relevant to this CAFO, Respondent was a “person,” as that term is defined at
25 40 C.F.R. § 745.83.

26 18. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at 40
27

1 C.F.R. § 745.83.

2 19. At all times relevant to this CAFO, the multi-family property at 1719-1721 Lyon Street
3 (“Property”) in San Francisco, California was “target housing,” as that term is defined at Section
4 401 of TSCA, 15 U.S.C. § 2681.
5

6 20. Within the period of April 2012 to July 2012, Respondent performed at least one
7 “renovation,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Property.
8 The renovations performed at the Property within the April 2012 to July 2012 time frame are
9 referenced in this CAFO as “Renovations.”
10

11 FIRST CLAIM

12 21. Paragraphs 1-20 of this CAFO are realleged and are incorporated herein by reference.

13 22. Respondent performed the Renovations at the Property without firm certification
14 pursuant to 40 C.F.R. § 745.89.

15 23. Respondent did not qualify for the exception involving a lead-free determination
16 identified in 40 C.F.R. § 745.82(a).
17

18 24. Respondent's performance of Renovations at the Property without firm certification
19 pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of TSCA, 15 U.S.C.
20 § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).
21

22 SECOND CLAIM

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

24 26. Respondent did not obtain from the owner of the Property a written acknowledgment that
25 the owner has received the “pamphlet,” as that term is defined at 40 C.F.R. § 745.83, or obtain a
26 certificate of mailing the “pamphlet” at least 7 days prior to the Renovations.
27

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1 27. Respondent's failure to obtain from the owner of the Property a written acknowledgment
2 that the owner has received the "pamphlet," as that term is defined at 40 C.F.R. § 745.83, or
3 obtain a certificate of mailing the "pamphlet" at least 7 days prior to the Renovations constitutes
4 a violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
5

6 THIRD CLAIM

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

8 29. With respect to the Renovations at the Property, Respondent did not retain documentation
9 that a certified renovator was assigned to the project; that a certified renovator provided on-the-
10 job training for workers used; that a certified renovator performed or directed workers who
11 performed all of the work practice tasks described in § 745.85(a); and that a certified renovator
12 performed the post-renovation cleaning verification described in § 745.85(b).
13

14 30. Respondent's failures to retain documentation that a certified renovator was assigned to
15 the project; that a certified renovator provided on-the-job training for workers used; that a
16 certified renovator performed or directed workers who performed all of the work practice tasks
17 described in § 745.85(a); and that a certified renovator performed the post-renovation cleaning
18 verification described in § 745.85(b) for the Renovations performed at the Property constitutes
19 four (4) violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.86(b)(6).
20

21 **IV. RESPONDENT'S ADMISSIONS**

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

4 **V. CIVIL ADMINISTRATIVE PENALTY**

5
6 32. Respondent agrees to the assessment of a penalty in the amount of FIVE HUNDRED
7 DOLLARS (\$500) as final settlement of the civil claims against Respondent arising under TSCA
8 as alleged in Section III of this CAFO.

9 33. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
10 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
11 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
12 as follows:
13

14 Regular Mail:
15 U.S. Environmental Protection Agency
16 Fines and Penalties
17 Cincinnati Finance Center
18 PO Box 979077
19 St. Louis, MO 63197-9000

20 Wire Transfers:
21 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
22 following information:
23 Federal Reserve Bank of New York
24 ABA = 021030004
25 Account = 68010727
26 SWIFT address = FRNYUS33
27 33 Liberty Street
28 New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:
U.S. Bank
1005 Convention Plaza

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1 Mail Station SL-MO-C2GL
2 ATTN Box 979077
3 St. Louis, MO 63101

4 ACH (also known as REX or remittance express):
5 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
6 Account Number: 310006, Environmental Protection Agency
7 CTX Format Transaction Code 22 - checking
8 Physical location of US Treasury Facility
9 5700 Rivertech Court
10 Riverdale, MD 20737
11 Remittance Express (REX) 1-866-234-5681

12 On Line Payment:

13 This payment option can be accessed from the information below:

14 www.pay.gov

15 Enter "sf01.1" in the search field

16 Open form and complete required fields

17 If clarification regarding a particular method of payment remittance is needed, contact the EPA
18 Cincinnati Finance Center at 513-487-2091.

19 Concurrently, a copy of the check or notification that the payment has been made by one of the
20 other methods listed above, including proof of the date payment was made, shall be sent with
21 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
22 following addressees:

23 Regional Hearing Clerk
24 Office of Regional Counsel (ORC-1)
25 U.S. Environmental Protection Agency, Region 9
26 75 Hawthorne Street
27 San Francisco, California 94105

28 Christopher Rollins
29 Waste & Chemical Section (ENF-2-2)
30 Enforcement Division
31 U.S. Environmental Protection Agency, Region 9
32 75 Hawthorne Street
33 San Francisco, CA 94105

34. Payment of the above civil administrative penalty shall not be used by Respondent or any

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1 other person as a tax deduction from Respondent's federal, state, or local taxes.

2 35. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
3 32 by the deadline specified in Paragraph 33, then Respondent shall pay to EPA a stipulated
4 penalty of \$100 per day in addition to the assessed penalty. Stipulated penalties shall accrue
5 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
6 become due and payable upon written request by EPA. In addition, failure to pay the civil
7 administrative penalty by the deadline specified in Paragraph 33 may lead to any or all of the
8 following actions:
9

10 a. The debt being referred to a credit reporting agency, a collection agency, or to the
11 Department of Justice for filing of a collection action in the appropriate United States District
12 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
13 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
14

15 b. The debt being collected by administrative offset (i.e., the withholding of money payable
16 by the United States to, or held by the United States for, a person to satisfy the debt the person
17 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
18 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
19

20 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
21 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
22 or funds. 40 C.F.R. § 13.17.
23

24 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
25 penalties charges, and administrative costs will be assessed against the outstanding amount that
26 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
27

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1 deadline specified in Paragraph 33. Interest will be assessed at an annual rate that is equal to the
2 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
3 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
4 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
5 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
6 Administrative costs for handling and collecting Respondent's overdue debt will be based on
7 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
8 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
9 Department of Justice, the Internal Revenue Service), that department or agency may
10 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
11 collecting Respondent's overdue debt.
12
13

14 **VI. RESPONDENT'S CERTIFICATION**

15 36. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
16 federal regulations promulgated at Subpart E.
17

18 **VII. RETENTION OF RIGHTS**

19 37. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
20 for federal civil penalties for the violations and facts specifically alleged in Section III of this
21 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
22 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
23 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
24 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
25 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
26
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1 address any violation of this CAFO or any violation not specifically alleged in Section III of this
2 CAFO.

3 38. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
4 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
5 permits.
6

7 **VIII. ATTORNEYS' FEES AND COSTS**

8 39. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
9 proceeding.
10

11 **IX. EFFECTIVE DATE**

12 40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
13 on the date that the final order contained in this CAFO, having been approved and issued by
14 either the Regional Judicial Officer or Regional Administrator, is filed.
15

16 **X. BINDING EFFECT**

17 41. The undersigned representative of Complainant and the undersigned representative of
18 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
19 of this CAFO and to bind the party he or she represents to this CAFO.
20

21 42. The provisions of this CAFO shall apply to and be binding upon Respondent and its
22 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
23 and assigns.
24

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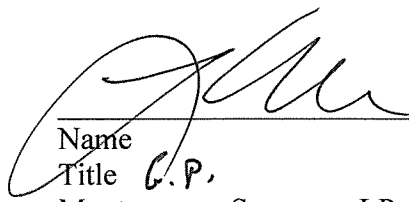
3 FOR RESPONDENT, MONTGOMERY-SANSOME, LP

4

5 6-5-18

6 DATE

7


Name
Title G.P.
Montgomery-Sansome, LP

8


9 FOR COMPLAINANT:

10

11 6/19/18

12 DATE

13


Douglas K. McDaniel
Chief, Waste & Chemical Section
Enforcement Division

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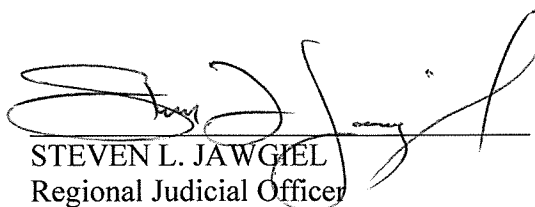
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1 **FINAL ORDER**

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

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2018-~~0004~~⁰⁰⁰⁴) be
4 entered, and that Respondent shall pay a civil administrative penalty in the amount of FIVE
5 HUNDRED DOLLARS (\$500) and comply with the terms and conditions set forth in the
6 Consent Agreement. This Consent Agreement and Final Order shall become effective upon
7 filing.
8

9
10 06/26/18
11 DATE

12 
13 STEVEN L. JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency,
16 Region 9
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Montgomery-Sansome LP*, TSCA-09-2018-0004, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent; and Counsel for EPA, as indicated below:

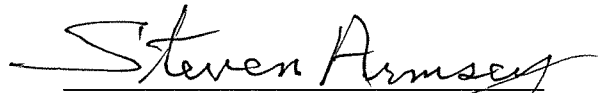
BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Edwin Bradley
Attorney-at-Law
1390 Market Street (Suite 200)
San Francisco, CA 94102

HAND DELIVERED:

Complainant - Brian P. Riedel
Office of Regional Counsel
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, Calif., this 26th day of June, 2018.



Steven Armsey
Regional Hearing Clerk
EPA, Region 9