

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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In the Matter of :  
:  
MC Contracting, Paint, & Roofing, LLC :  
dba M.C. Painting & Contractor and :  
M.C. Painting Group, :  
:  
Respondent :  
:  
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act :  
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CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
TSCA-02-2016-9167

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U.S. Environmental  
Protection Agency  
Region 2

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 ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this 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 MC Contracting, Paint, & Roofing, LLC (“hereinafter “Respondent” or “MC Painting”).
2. Respondent also does business as M.C. Painting & Contractor and M.C. Painting Group.
3. Respondent’s primary place of business is located at 7607 Bradford Street, Philadelphia, PA 19152.
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 Section 402 of TSCA, 15 U.S.C. § 2682, and set out at Title 40 of the Code of Federal Regulations (C.F.R.) Part 745, Subpart E (the “Renovation, Repair, and Painting Rule”) (the “RRP Rule”).
6. The RRP Rule requires that firms conducting renovations (as defined at 40 C.F.R. § 745.83) in target housing must undertake such renovations in accordance with the work practice standards of 40 C.F.R. Part 745, Subpart E.
7. Under Section 409 of TSCA, 15 U.S.C. § 2689, it is a violation for a firm conducting renovation, repair or painting work in target housing, subject to the requirements of 40 C.F.R. Part 745, to violate any requirement of the RRP Rule.
8. From at least September 24, 2013, to October 18, 2013, Respondent conducted renovation, repair and/or painting activities in a private residence located at 132 East Oak Avenue, Moorestown, N.J. (the “Property”).
9. The Property is considered “target housing” as defined at Section 401 of TSCA, 15 U.S.C. § 2681 and Section 40 C.F.R. §745.103.

10. On September 24, 2013, October 11, 2013, and October 18, 2013, an inspector from the Burlington County Health Department (“BCHD”) conducted inspections (“BCHD Inspections”) of the Respondent conducting renovation, repair and/or painting work at the Property.

11. On or about September 26, 2013, a tip/complaint was submitted by BCHD to the EPA Region 2 Lead Team alleging that Respondent was not complying with the RRP Rule while conducting renovation, repair and/or painting activities at the Property.

12. On October 21, 2013, an EPA inspector conducted a desktop inspection and contacted Respondent by phone and email requesting additional information regarding Respondent’s residential work at the Property at the time of BCHD’s inspection (“EPA’s Inspection”).

13. Based on BCHD’s and EPA’s Inspections, EPA determined that at the time of BCHD’s Inspection, Respondent violated:

- a) 40 C.F.R. § 745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii) - Respondent was not a certified firm at the time of its renovation of the Property during BCHD’s Inspection;
- b) 40 C.F.R. § 745.84(a)(1) - Respondent failed to provide a lead hazard pamphlet to the owner/occupant of the Property;
- c) 40 C.F.R. § 745.85(a)(1) - Respondent failed to post signs outside clearly defining the renovation work area;
- d) 40 C.F.R. § 745.85(a)(2)(ii)(C) - Respondent failed to cover the ground in the renovation work area with impermeable plastic sheeting for 10 feet in all directions;
- e) 40 C.F.R. § 745.85(a)(4)(ii) - Respondent failed to store waste under

containment at the conclusion of the workday; and

- f) 40 C.F.R. § 745.85 – Respondent failed to establish and maintain records documenting compliance.

14. Respondent's failures to comply with the provisions of the RRP Rule, as described in the previous paragraph, constitute independently-assessable violations of §§ 402 and 409 of TSCA, 15 U.S.C. §§ 2682 and 2689.

### 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 maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.
2. Respondent certifies that it is currently in compliance with the statutory provisions of TSCA and the RRP Rule codified at 40 C.F.R. § 745, Subpart E.
3. 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 to nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.
4. Respondent shall pay, by cashier's or certified check or electronic fund transfer, a civil penalty in the amount of **THREE THOUSAND DOLLARS (\$3,000)** according to the following schedule:

- a) \$1,500 due on or before **45 calendar days** from the date of the signature of the Final Order at the end of this document;
- b) \$1,500 due on or before **225 calendar days** from the date of the signature of the Final Order at the end of this document.

5. Payments must be received at the address listed in Paragraph 8, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due dates specified above (the date by which each such payment must be received shall hereafter be referred to as the “due date”).

- a) If Respondent fails to pay either of the installments required above, by its due date, Respondents shall also be liable to EPA for an additional stipulated penalty of \$500 for each such failure. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondents’ receipt from EPA of a written demand for payment of the penalties. Payment of stipulated payments shall be made in the same manner as prescribed in Paragraph 8, below, for payment of the civil penalty installments. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand. EPA, in its sole discretion, may reduce or eliminate any stipulated penalty due under this sub-paragraph.
- b) 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.

- c) Further, if any 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.
- d) 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.

6. In the event of respondent's failure to make any payment when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest and stipulated penalties then unpaid immediately due and payable.

7. In agreeing to this settlement, EPA relies, in part, on its review of documents Respondent provided showing its recent and current financial condition. Respondent hereby certifies the truth and accuracy of the financial documents provided to EPA.

8. 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 “**D 68010727 Environmental Protection Agency**”
- 6) Name of Respondent: **MC Contracting, Paint, & Roofing, LLC dba M.C. Painting & Contractor and M.C. Painting Group**
- 7) Case Docket Number **TSCA-02-2016-9167**

Respondent shall also promptly send copies of these checks or furnish reasonable proof that such EFT payments have been made to both:

Jeannie M. Yu, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

and

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

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 and any stipulated penalties set out herein) the civil and administrative claims described in the Findings of Fact and Conclusions of Law section set forth above.

11. 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.

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. The Respondent agrees not to contest the validity or any term of this CA/FO 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 CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

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

19. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulation, 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 CA/FO 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 itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

**MC Contracting, Paint, & Roofing, LLC**

RESPONDENT:

BY:

NAME: Eblin Medical Center  
(PLEASE PRINT)

TITLE:

DATE:

COMPLAINANT:

D LaPosta  
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:

In the Matter of MC Contracting, Paint, & Roofing, LLC dba M.C. Painting & Contractor and  
M.C. Painting Group,  
Docket Number TSCA-02-2016-9167

**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 MC Contracting, Paint, & Roofing, LLC, dba M.C. Painting & Contractor and M.C. Painting Group, bearing Docket Number TSCA-02-2016-9167. 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.



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

DATE: September 30, 2016

In the Matter of MC Contracting, Paint, & Roofing, LLC dba M.C. Painting & Contractor and  
M.C. Painting Group,  
Docket Number TSCA-02-2016-9167

**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:

Andrew Miller, Esq.  
Counsel for MC Contracting, Paint, & Roofing, LLC.  
15 St. Asaphs Road  
Bala Cynwyd, PA 19004

Dated: 9/30/16  
New York, New York

