



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 11 2018

REPLY TO THE ATTENTION OF:

LC-17J

Mr. Andres Moreno  
Owner  
DuraPro Painting LLC  
1425 Jessamine Avenue West, Apt. 212  
St. Paul, Minnesota 55108

Consent Agreement and Final Order In the Matter of:  
DuraPro Painting LLC **TSCA-05-2018-0010**

Dear Mr. Moreno:

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 11, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$593.55 is to be paid in the manner described in paragraphs 33 and 34. 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 that reads "Pamela Grace".

Pamela Grace  
Pesticides and Toxic Compliance Section  
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

DuraPro Painting, L.L.C.,  
St. Paul, Minnesota

Respondent



Docket No. TSCA-05-2018-0010

Proceeding to Assess a Civil Penalty  
Under Section 16(a) of the Toxic Substances  
Control Act, 15 U.S.C. § 2615(a)

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 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. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, Region 5, U. S. Environmental Protection Agency.
3. Respondent is DuraPro Painting L.L.C., 1425 Jessamine Avenue West, St. Paul, Minnesota.
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). 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 assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence 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.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA by adding Subchapter IV – Lead Exposure Reduction. Section 406(b) of TSCA, 15 U.S.C. § 2686, required the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

11. Section 407 of TSCA, 15 U.S.C. § 2687, required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.

12. On June 1, 1998, EPA promulgated, pursuant to 15 U.S.C. §§ 2686 and 2687, regulations codified at 40 C.F.R. Part 745, Subpart E, which was subsequently amended on April 22, 2008.

13. 40 C.F.R. § 745.83 defines *firm* to mean 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 this part (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, 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

15. 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.

16. 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.

17. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child occupied facilities without certification from EPA under 40 C.F.R. § 745.89 unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

18. Under Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or refuse to comply with Sections 406 and 407 of TSCA, 15 U.S.C. §§ 2686, 2687, or any rule or order issued thereunder.

19. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d) authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

#### **General Allegations**

20. During 2017, Respondent was a corporation under the laws of the State of Minnesota.

21. During 2017 Respondent was a *firm* as defined by 40 C.F.R. § 745.83.

22. On April 14, 2017, Respondent was not a firm certified by EPA pursuant to 40 C.F.R. § 745.81(a)(2)(ii) to perform, offer, or claim to perform, renovations to target housing.

23. On April 14, 2017, Respondent offered, performed, or claimed to perform, for compensation, modifications of an existing structure that resulted in disturbances of painted surfaces as detailed in this paragraph:

Property Address	Year Built	Renovation Activities	Date of Contract
5328 45 <sup>th</sup> Avenue South Minneapolis, Minnesota	1929	Exterior Painting Project	April 14, 2017

24. The property listed in paragraph 23 was a *residential dwelling* as defined by 40 C.F.R. § 745.103.

25. The residential dwelling listed in paragraph 23 was built prior to 1978.

26. The residential dwelling listed in paragraph 23 was *target housing* as defined at 40 C.F.R. § 745.103.

27. Respondent power washed and scraped painted surfaces on the exterior of the target housing prior to painting.

28. Respondent *renovated* the target housing as defined at 40 C.F.R. § 745.83.

### Count I

#### **Performed, Offered, or Claimed to Perform, Renovations Prior to Obtaining Certification From EPA**

29. Complainant incorporates into this Count paragraphs 1 through 28 above.

30. 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).  
40 C.F.R. § 745.81(a)(2)(ii).

31. On April 14, 2017, Respondent was not certified by EPA pursuant to 40 C.F.R. § 745.89 as a firm to perform, offer, or claim to perform, renovations to target housing.

32. Therefore, Respondent's subsequent claim to perform, offer to perform, and performance of, renovations to target housing, constituted a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

#### Civil Penalty

33. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$593.55. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation or 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, dated August 19, 2010.

34. Within 30 days after the effective date of the CAFO, Respondent must pay a \$593.55 civil penalty for the TSCA violation by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state "In the Matter of DuraPro Painting L.L.C." and the Docket Number of this CAFO.

35. A transmittal letter stating Respondent's Name, Address, Case Title, Case Docket

Number and the Billing Document Number must accompany each payment. Respondent must send a copy of each 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

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

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

37. If Respondent does not pay timely 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). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following 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**

39. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other



Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [trevino.jeffery@epa.gov](mailto:trevino.jeffery@epa.gov) (for Complainant), and [kwklaw@aol.com](mailto:kwklaw@aol.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

40. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in the CAFO.

41. 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.

42. This CAFO does not affect Respondent’s responsibility to comply with TSCA, regulations promulgated thereunder, and other applicable federal, state, and local laws.

43. Respondent certifies that it is complying with TSCA and regulations promulgated thereunder.

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

45. Each person signing this agreement 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.

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

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

**DuraPro Painting L.L.C., Respondent**

June 5th 2018

Date

Andres Moreno

Andres Moreno, Owner  
DuraPro Painting LLC

**United States Environmental Protection Agency, Complainant**

07/03/2018

Date

Michael D. Harris *for T.H.*

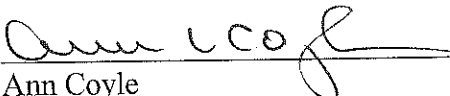
Michael D. Harris  
Acting Director  
Land and Chemicals Division

**In the Matter of: DuraPro Painting L.L.C.**  
**Docket No. TSCA-05-2018-0010**

**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.

July 10, 2018  
Date

  
\_\_\_\_\_  
Ann Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

In the matter of: DuraPro Painting LLC  
Andres Moreno, Owner

Docket Number: TSCA-05-2018-0010

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 11, 2018, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

kwklaw@aol.com

Andres Moreno, Owner  
DuroPro Painting LLC  
1425 Jessamine Avenue West  
St. Paul, Minnesota 55108

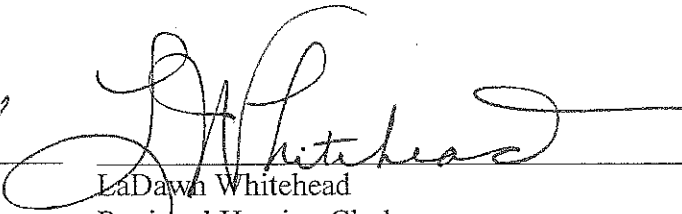
Copy by E-mail to  
Attorney for Complainant:

Jeffery Trevino  
trevino.jeffery@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

July 11, 2018 

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

CERTIFIED MAIL RECEIPT NUMBER(S):

7014 2870 0001 9580 6545