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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

1 NANCY J. MARVEL  
Regional Counsel  
2  
3 CAROL BUSSEY  
Assistant Regional Counsel  
U. S. Environmental Protection Agency  
4 Region IX  
75 Hawthorne Street  
5 San Francisco, CA 94105  
(415) 972-3950  
6

7 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
8 REGION IX  
75 HAWTHORNE STREET  
9 SAN FRANCISCO, CA 94105

10 In the Matter of: )  
11 ) Docket No. TSCA-09-2007-0010  
Fine Custom Painting, Inc., )  
12 ) CONSENT AGREEMENT  
Respondent. ) AND FINAL ORDER  
13 )

14 I. CONSENT AGREEMENT

15 Complainant, the Director of the Communities and Ecosystems  
16 Division, United States Environmental Protection Agency, Region  
17 IX ("EPA"), and Respondent, Fine Custom Painting, Inc.  
18 ("Respondent") agree to settle this matter initiated against  
19 Respondent under Section 16(a) of the Toxic Substances Control  
20 Act ("TSCA"), as amended, 15 U.S.C. §§ 2601 et seq., and consent  
21 to the entry of this Consent Agreement and Final Order ("CAFO").  
22

23 A. AUTHORITY

24 1. EPA initiated this civil administrative proceeding for  
25 the assessment of a civil penalty under Section 16(a) of TSCA by  
26 issuing a Complaint and Notice of Opportunity for Hearing  
27 ("Complaint") against Respondent on September 28, 2007, in  
28 accordance with the Consolidated Rules of Practice Governing the

1 Administrative Assessment of Civil Penalties and the  
2 Revocation/Termination or Suspension of Permits at 40 C.F.R. Part  
3 22.

4 2. The Complaint alleges that Respondent violated Section  
5 409 of TSCA by failing to comply with the provisions of 40 C.F.R.  
6 Part 745, Subpart E and specifically 40 C.F.R. §§745.85(b)(1) and  
7 (2).

8 3. EPA and Respondent have agreed to resolve this civil  
9 administrative proceeding by executing this CAFO.

10 B. RESPONDENT'S ADMISSIONS

11 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the  
12 purpose of this proceeding, Respondent (i) admits that EPA has  
13 jurisdiction over the subject matter of the Complaint and over  
14 Respondent; (ii) neither admits nor denies the specific factual  
15 allegations contained in the Complaint; (iii) consents to any and  
16 all conditions specified in this Consent Agreement and Final  
17 Order ("CAFO") and to the assessment of the civil administrative  
18 penalty under Section I.C of this CAFO; (iv) waives any right to  
19 contest the allegations contained in the Complaint; and  
20 (v) waives the right to appeal the proposed final order contained  
21 in this CAFO.

22 C. CIVIL ADMINISTRATIVE PENALTY

23 5. Respondent agrees to the assessment of a penalty in the  
24 amount of TEN THOUSAND DOLLARS(\$10,000) plus interest, paid over  
25 a twenty-four (24)-month period in accordance with the schedule  
26 attached as Attachment 1, as final settlement of the civil claims  
27

1 against Respondent arising under TSCA as alleged in the  
2 Complaint.

3 6. Respondent shall pay each installment of the assessed  
4 penalty in accordance with the schedule attached as Attachment 1  
5 of this CAFO. Payments shall be made by cashier's or certified  
6 check payable to the "Treasurer, United States of America," and  
7 shall be sent by certified mail, return receipt requested, to the  
8 following address:

9 US Environmental Protection Agency  
10 Fines and Penalties  
11 Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000

12 Each payment shall be accompanied by a transmittal letter  
13 identifying the case name, the case docket number, and this CAFO.  
14 Concurrent with delivery of each payment of the penalty,  
15 Respondent shall send a copy of the check and transmittal letter  
16 to the following addresses:

- 17 1) Regional Hearing Clerk (ORC-1)  
18 Office of Regional Counsel  
19 U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105
- 20 2) Manager, Toxics Office (CED-4)  
21 Communities and Ecosystems Division  
22 U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

23 7. Payment of the above civil administrative penalty shall  
24 not be used by Respondent or any other person as a tax deduction  
25 from Respondent's federal, state, or local taxes.

26 8. If Respondent fails to pay the assessed civil  
27 administrative penalty specified in Paragraph 5 in accordance

1 with the schedule attached as Attachment 1, then Respondent shall  
2 pay to EPA a stipulated penalty of \$150 per day for each day that  
3 payment of the penalty is late, in addition to the assessed  
4 penalty. Stipulated penalties shall be paid upon written request  
5 by EPA. In addition, failure to pay the civil administrative  
6 penalty in accordance to Attachment 1 may lead to any or all of  
7 the following actions:

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

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

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

26 d. In accordance with the Debt Collection Act of 1982 and  
27 40 C.F.R. Part 13 interest, penalties charges, and  
28

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

#### 22 D. RETENTION OF RIGHTS

23 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only  
24 resolves Respondent's liability for federal civil penalties for  
25 the violations and facts specifically alleged in the Complaint.  
26 Nothing in this CAFO is intended to or shall be construed to  
27 resolve (i) any civil liability for violations of any provision

1 of any federal, state, or local law, statute, regulation, rule,  
2 ordinance, or permit not specifically alleged in the Complaint;  
3 or (ii) any criminal liability. EPA specifically reserves any  
4 and all authorities, rights, and remedies available to it  
5 (including, but not limited to, injunctive or other equitable  
6 relief or criminal sanctions) to address any violation of this  
7 CAFO or any violation not specifically alleged in the Complaint.

8 10. This CAFO does not exempt, relieve, modify, or affect  
9 in any way Respondent's duty to comply with all applicable  
10 federal, state, and local laws, regulations, rules, ordinances,  
11 and permits.

12 E. ATTORNEYS' FEES AND COSTS

13 11. Each party shall bear its own attorneys' fees, costs,  
14 and disbursements incurred in this proceeding.

15 F. EFFECTIVE DATE

16 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and  
17 22.31(b), this CAFO shall be effective on the date that the final  
18 order contained in this CAFO, having been approved and issued by  
19 either the Regional Judicial Officer or Regional Administrator,  
20 is filed.

21 G. BINDING EFFECT

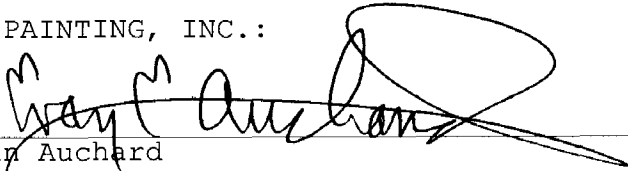
22 13. The undersigned representative of Complainant and the  
23 undersigned representative of Respondent each certifies that he  
24 or she is fully authorized to enter into the terms and conditions  
25 of this CAFO and to bind the party he or she represents to this  
26 CAFO.

27 14. The provisions of this CAFO shall apply to and be  
28

1 binding upon Respondent and its officers, directors, employees,  
2 agents, trustees, servants, authorized representatives,  
3 successors, and assigns.


4 FOR RESPONDENT, FINE CUSTOM PAINTING, INC.:

5  
6 1/2/09  
DATE

  
Evan Auchard  
President  
FINE CUSTOM PAINTING, INC.

9 FOR COMPLAINANT, EPA REGION IX:

10  
11 3/26/09  
DATE


  
Enrique Manzanilla  
Director  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency,  
Region IX

1  
2 II. FINAL ORDER

3 \_\_\_\_\_ Complainant and Respondent, having entered into the  
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-  
6 2007-0010) be entered, and that Respondent shall pay a civil  
7 administrative penalty in the amount of TEN THOUSAND DOLLARS  
8 (\$10,000) plus interest in accordance with the schedule set forth  
9 in Attachment 1 and comply with the terms and conditions set  
10 forth in the Consent Agreement.

11 03/26/09  
12 DATE

13   
14 STEVEN L. JAWGIEL  
15 Regional Judicial Officer  
16 U.S. EPA, Region IX



CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. TSCA-09-2007-0010 ) against Fine Custom Painting, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. Evan Auchard  
President  
Fine Custom Painting  
129 Ross Valley Drive  
San Rafael, CA 94901

Certified Mail No.    7007 0710 0003 6240 2285

\_\_\_\_\_  
Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX

Date

**ATTACHMENT 1 - INSTALLMENT PAYMENT SCHEDULE**  
**DOCKET NO. TSCA-09-2007-0010**

Payment 1 to be paid within 30 days of the effective date of CAFO- \$416.67 (no interest).

Payment plus interest for all subsequent installments made after 30 days of the effective date of CAFO- \$429.28

All subsequent payments of \$429.28 will be applied to principal and interest according to the following table:

	<b>Pmt</b>	<b>Principal</b>	<b>Interest</b>	<b>Cum Prin</b>	<b>Cum Int</b>	<b>Prin Bal</b>
	2	405.32	23.96	405.32	23.96	9178.01
	3	406.33	22.95	811.65	46.91	8771.68
	4	407.35	21.93	1219.00	68.84	8364.33
	5	408.37	20.91	1627.37	89.75	7955.96
	6	409.39	19.89	2036.76	109.64	7546.57
	7	410.41	18.87	2447.17	128.51	7136.16
	8	411.44	17.84	2858.61	146.35	6724.72
	9	412.47	16.81	3271.08	163.16	6312.25
	10	413.50	15.78	3684.58	178.94	5898.75
	11	414.53	14.75	4099.11	193.69	5484.22
	12	415.57	13.71	4514.68	207.40	5068.65
	13	416.61	12.67	4931.29	220.07	4652.04
	14	417.65	11.63	5348.94	231.70	4234.39
	15	418.69	10.59	5767.63	242.29	3815.70
	16	419.74	9.54	6187.37	251.83	3395.96
	17	420.79	8.49	6608.16	260.32	2975.17
	18	421.84	7.44	7030.00	267.76	2553.33
	19	422.90	6.38	7452.90	274.14	2130.43
	20	423.95	5.33	7876.85	279.47	1706.48
	21	425.01	4.27	8301.86	283.74	1281.47
	22	426.08	3.20	8727.94	286.94	855.39
	23	427.14	2.14	9155.08	289.08	428.25
	24	*428.25	1.07	9583.33	290.15	0.00

\*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

1<sup>st</sup> installment \$416.67 => Due within 30 days of effective date of CAFO  
2<sup>nd</sup> installment \$429.28 => Due within 30 days of deadline for 1<sup>st</sup> installment payment  
3<sup>rd</sup> installment \$429.28 => Due within 30 days of deadline for 2<sup>nd</sup> installment payment  
4<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 3<sup>rd</sup> installment payment  
5<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 4<sup>th</sup> installment payment  
6<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 5<sup>th</sup> installment payment  
7<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 6<sup>th</sup> installment payment  
8<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 7<sup>th</sup> installment payment  
9<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 8<sup>th</sup> installment payment  
10<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 9<sup>th</sup> installment payment

1 11<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 10<sup>th</sup> installment payment  
2 12<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 11<sup>th</sup> installment payment  
3 13<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 12<sup>rd</sup> installment payment  
4 14<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 13<sup>th</sup> installment payment  
5 15<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 14<sup>th</sup> installment payment  
6 16<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 15<sup>th</sup> installment payment  
7 17<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 16<sup>th</sup> installment payment  
8 18<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 17<sup>th</sup> installment payment  
9 19<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 18<sup>th</sup> installment payment  
10 20<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 19<sup>th</sup> installment payment  
11 21<sup>st</sup> installment \$429.28 => Due within 30 days of deadline for 20<sup>th</sup> installment payment  
12  
13 22<sup>nd</sup> installment \$429.28 => Due within 30 days of deadline for 21<sup>st</sup> installment payment  
14 23<sup>rd</sup> installment \$429.28 => Due within 30 days of deadline for 22<sup>nd</sup> installment payment  
15 24<sup>th</sup> installment \$429.28 => Due within 30 days of deadline for 23<sup>rd</sup> installment payment

16 Total Payment: \$10,290.15  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. TSCA-09-2007-0010 ) against Fine Custom Painting, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent attorney at the following address:

David C. Macpherson  
Attorney At Law  
Law Offices of David C. Macpherson  
145 Corte Madera Town Center Suite 656  
Corte Madera, CA 94925-1215

Certified Mail No. 7007 0710 0003 6240 2278

*For* Steven Ramsey  
Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX

Date April 1, 2009