

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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: In the Matter of :  
: :  
: **UTICA PAINTING COMPANY, INC.** : CONSENT AGREEMENT  
: : AND  
: : FINAL ORDER  
: :  
: Respondent : Docket No.  
: : TSCA-02-2018-9291  
: :  
: Proceeding under Section 16(a) of :  
: the Toxic Substances Control Act :  
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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 Code of Federal Regulations ("C.F.R.") Part 22. Pursuant to 40 C.F.R. § 22.13(b), 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 pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Utica Painting Company, Inc. (“Utica Painting” or “Respondent”).
2. Utica Painting’s primary place of business is 5416 Summer Set Way, Utica, New York 13502.
3. Utica Painting is a firm that engages (or has engaged) in renovations which may involve lead-based paint and 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 forth at 40 C.F.R. Part 745, Subpart E.
4. Respondent at all times relevant herein was a “person” as that term is defined at 40 C.F.R. § 745.83.
5. On or about June 2015, Utica Painting removed and replaced exterior chipped paint at property situated at 134 Boyce Avenue, Utica, New York 13501 (“Boyce Avenue Property”).
6. The Boyce Avenue Property at all times relevant herein, was “target housing” as that phrase is defined by Section 401 of TSCA, 15 U.S.C. § 2681 and 40 C.F.R. § 745.103.
7. Respondent’s activities at the Boyce Avenue Property constituted “renovation,” as that term is defined by 40 C.F.R. § 745.83.
8. On or about November 13, 2015, a representative of the United States Environmental Protection Agency, Region 2 (“EPA”) initiated an investigation of the renovation activities that had been performed by Respondent at the Boyce Avenue Property.
9. Based on the EPA investigation, upon information obtained from the Oneida County Health Department (“OCHD”) in relation to an inspection and lead sampling the OCHD performed at the Boyce Avenue Property and Respondent’s September 18, 2015 Response to an Information Request Letter (“IRL”) dated September 3, 2015, EPA determined that the

renovation work that had been performed by Respondent at the Boyce Avenue Property was subject to the requirements set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (RRP) Rule”).

10. EPA also determined that Respondent failed to provide the owner of the Boyce Avenue Property with the Renovate Right pamphlet, as required by 40 C.F.R. § 745.84(a)(1).

11. EPA further determined that Respondent, with respect to its renovation activities at the Boyce Avenue Property, had failed to establish and maintain records of its compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.87(b).

12. Respondent’s failures to comply with the RRP Rule constitute violations of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be assessed under TSCA § 16(a), 15 U.S.C. § 2615(a).

13. On January 22, 2018, EPA held a telephonic conference with Respondent to discuss EPA’s findings with regard to Respondent’s failures to comply with TSCA and the RRP Rule during its renovation activities at the Boyce Avenue Property.

14. After that telephonic conference, Respondent submitted to EPA financial information and documentation of Utica Painting’s gross annual income.

#### 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 certifies that commencing on the effective date of this Order, Utica Painting shall hereinafter maintain compliance with all applicable regulations set forth at 40 C.F.R. Part 745 Subpart E.

2. Respondent further certifies that:

The financial information and documentation he submitted to EPA on February 9, 2018, is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. EPA retains the right to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation and/or representations made to EPA regarding Respondent's current financial condition is false or, in any material respect, inaccurate.

3. Respondent shall hereinafter maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

4. 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; (b) neither admits nor denies the specific factual allegations and conclusions of law contained in the "Findings of Fact and Conclusions of Law" section, above, and enters into this Consent Agreement without any admission of fault or liability.

5. Respondent shall pay, by cashier's or certified check or electronic payment via Fedwire, a civil penalty in the amount of **FIVE HUNDRED SIXTY-FIVE DOLLARS (\$565)**. Such payment shall be made by cashier's check or certified check or electronically by Fedwire. If the payment is made by check, then the check shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: ***IN THE MATTER OF***

**UTICA PAINTING COMPANY, INC.**, and shall bear thereon the **Docket No. TSCA-02-2018-**

**9291**. If Respondent chooses to make the payment by Fedwire, then 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 New York receiving payment: **68010727.**
- 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727** Environmental Protection Agency.
- 6) Name of Respondent: **UTICA PAINTING COMPANY, INC.**
- 7) Number: **TSCA 02-2018-9291.**

6. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days from the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the "due date")

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

d. The civil penalty provided for herein constitutes "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

7. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Mr. Demian Ellis  
Lead Enforcement Coordinator  
Pesticides and Toxic Substances Branch – Lead Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
2890 Woodbridge Avenue – MS 225  
Edison, New Jersey 08837

A copy of the cover page or other transmittal sent to the above also shall be sent via e-mail to:

Gary H. Nurkin  
Assistant Regional Counsel  
[nurkin.gary@epa.gov](mailto:nurkin.gary@epa.gov)

Unless the above-named EPA contacts are later advised otherwise in writing, EPA will address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Felix Fasolo  
Utica Painting Company, Inc.  
5416 Summer Set Way,  
Utica, New York 13502

8. Full payment of the penalty described in paragraph “5” of this Section, above, shall only resolve Respondent’s liability for federal civil penalties for the violations described in paragraphs “10” and “11”, above, in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

9. 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.

10. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

11. Respondent consents to the issuance of the accompanying Final Order.

12. Respondent agrees that all terms of settlement are set forth herein.

13. 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.

14. 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.

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

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

17. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, 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 Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

18. 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.

19. Each party hereto agrees to bear its own costs and fees in this matter.

20. Respondent consents to service upon then of a copy of this Consent Agreement and final order by an EPA employee other than the Regional Hearing Clerk.



In the Matter of Utica Painting Company, Inc  
Docket Number TSCA-02-2018-9291

RESPONDENT:

BY:

Felix A. Fazio  
(SIGNATURE)

NAME:

Felix A. Fazio  
(PLEASE PRINT)

TITLE:


as owner - Utica Painting Co Inc

DATE:

3.28.18

In the Matter of Utica Painting Company, Inc  
Docket Number TSCA-02-2018-9291

COMPLAINANT:

  
\_\_\_\_\_

Dore LaPosta, Director

Division of Enforcement and Compliance  
Assistance

U.S. Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007-1866

MAR 30 2018

DATE: \_\_\_\_\_

In the Matter of Utica Painting Company, Inc  
Docket Number TSCA-02-2018-9291

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement resolving In the Matter of Utica Painting Company, Inc., bearing Docket Number TSCA-02-2018-9291. 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 –  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Date: April 3, 2018

In the Matter of Utica Painting Company, Inc.  
Docket Number TSCA-02-2018-9291

**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:

Mr. Felix Fasolo  
Utica Painting Company, Inc.  
5416 Summer Set Way  
Utica, New York 13502

**APR 04 2018**  
Dated: \_\_\_\_\_  
New York, New York

  
Yolanda Majette,  
WTS Branch Secretary