

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	DOCKET NO.: TSCA-03-2017-0155
)	
Peter del Cardayre)	Proceeding Under Section 16(a) of the
2702 W. Grace Street)	Toxic Substances Control Act, 15 U.S.C.
Richmond, VA 23220)	Section 2615(a)
)	
Respondent,)	
)	
2702 W. Grace Street)	
Richmond, VA 23220)	
)	
Facility.)	

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EPA REGION III
PHILADELPHIA
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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Peter del Cardayre (“Respondent”) pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant's civil penalty claims against Respondent under TSCA arising from alleged violations of the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear his own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Complainant's Findings of Fact and Conclusions of Law

8. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
9. Pursuant to 40 C.F.R. § 745.83, the term "firm" means "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."
10. Pursuant to 40 C.F.R. § 745.83, the term "renovation" means "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 40 C.F.R. § 745.223."
11. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term "target housing" means "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling."
12. Beginning in April 2014, Respondent began scraping and sanding exterior painted surfaces in common areas of a residential property located at 2702 W. Grace Street in Richmond, Virginia, which he owned, occupied as his home and used as rental property.
13. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a "firm" who performed a "renovation," as those terms are defined at 40 C.F.R. § 745.83, at the property located at 2702 W. Grace Street in Richmond, Virginia 23220 ("Renovation Property").
14. The Renovation Property was constructed prior to 1978 and is "target housing" as that term is defined in Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
15. Respondent's conduct described in paragraph 12 constituted a renovation for compensation under 40 C.F.R. § 745.82(a) and was subject to the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.
16. On July 29, 2015, duly designated representatives of the EPA Administrator met with Respondent at 2702 W. Grace Street in Richmond, Virginia and conducted a records inspection to determine Respondent's level of compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.

Alleged Violations

Count 1 – Failure to Obtain Initial Firm Certification

17. The allegations contained in Paragraphs 1 through 16 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

18. Pursuant to 40 C.F.R. § 745.81(a)(2), firms are required to be EPA certified under § 745.89 prior to performing renovations at target housing.

19. Respondent was not an EPA certified firm at the time he performed the renovation at the Renovation Property beginning in April 2014.

20. Respondent's acts or omissions described in paragraph 19 immediately above constitute a violation of 40 C.F.R. § 745.81(a)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 2 – Failure to Ensure That a Certified Renovator is Assigned

21. The allegations contained in Paragraphs 1 through 20 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

22. Pursuant to 40 C.F.R. § 745.89(d)(2), firms are required to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

23. Respondent did not ensure that a certified renovator was assigned to the renovation performed at the Renovation Property which began in April 2014.

24. Respondent's acts or omissions described in paragraph 23 immediately above constitute a violation of 40 C.F.R. § 745.89(d)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 3 – Failure to Notify or Make EPA-Approved Lead Hazard Pamphlet Available

25. The allegations contained in Paragraphs 1 through 24 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

26. Pursuant to 40 C.F.R. § 745.84(b)(2), firms performing renovations in common areas of multi-unit target housing are required to notify in writing, or ensure written notification of, each affected unit and make EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet available upon request before beginning renovation activities.

27. Respondent failed to notify in writing, or ensure written notification of, the affected unit or make EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet available upon request before beginning renovation activities in common areas at the Renovation Property in April 2014.

28. Respondent's acts or omissions described in paragraph 27 immediately above constitute a violation of 40 C.F.R. § 745.84(b)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 4 – Failure to Retain Records Demonstrating Compliance with Work Practices

29. The allegations contained in Paragraphs 1 through 28 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

30. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E, for a period of 3 years following completion of the renovation.

31. Section 40 C.F.R. §745.86(b) specifies the types of records required to be retained pursuant to 40 C.F.R. § 745.86(a) and includes, but is not limited to, records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) and post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b). *See* 40 C.F.R. § 745.86(b)(6).

32. At the time of the July 29, 2015 inspection, Respondent had not retained records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at the Renovation Property beginning in April 2014.

33. Respondent's acts or omissions described in paragraph 32 immediately above constitute a violation of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Civil Penalty

34. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of one thousand two hundred and sixty-seven dollars (\$1,267). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of one thousand two hundred and sixty-seven dollars (\$1,267) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

35. The Parties represent that the settlement terms are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (August 2012, revised April 2013); *Pilot RRP Penalty Program for Micro-Businesses* (May 3, 2012); and *Pilot Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* (March 5, 2017).

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

37. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

38. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

39. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

40. Respondent shall pay the amount described in paragraph 34 by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

Beneficiary: US Environmental Protection Agency

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Physical location of US Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

All payments shall also reference the above case caption and docket number, DOCKET NO.: TSCA-03-2017-0155. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Craig Yussen (3LC41), U.S. Environmental Protection Agency, Region III, Office of Land Enforcement, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Certification

41. Respondent certifies that he is not currently performing any renovations and that any renovations he performs in the future will be in compliance with all applicable requirements of TSCA, 15 U.S.C. §§ 2601 *et seq.* Respondent further certifies that he understands that he is required to comply with the regulatory notification and disclosure requirements of the Real Estate Notification and Disclosure Rule for Lead-Based Paint codified at 40 C.F.R. Part 745, Subpart F, for target housing that he leases or sells.

Other Applicable Laws

42. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

43. This CAFO resolves only EPA's civil claims for penalties for the specific violations of TSCA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of *the Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

44. This settlement shall constitute full and final satisfaction of all claims for civil penalties which Complainant may have under Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

45. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent’s successors and assigns. By his or her signature below, is acknowledging that he is fully authorized to execute this Consent Agreement and to legally bind himself to the terms and conditions of this CAFO.

Effective Date


46. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

47. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

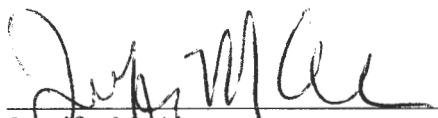
For Respondent:

6/15/17
Date


Peter del Cardayre

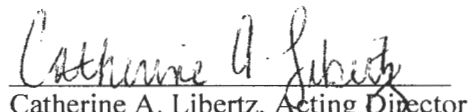
For Complainant:

6/27/17
Date


Jennifer M. Abramson
Counsel for Complainant

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

7-17-17
Date


Catherine A. Libertz, Acting Director
Land and Chemicals Division
U.S. EPA, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

Peter del Cardayre
2702 W. Grace Street
Richmond, VA 23220

Respondent,

2702 W. Grace Street
Richmond, VA 23220

Facility.

EPA Docket No. TSCA-03-2017-0155

FINAL ORDER

Proceeding under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a).

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Peter del Cardayre, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (August 2012, revised April 2013), *Pilot RRP Penalty Program for Micro-Businesses* (May 3, 2012), *Pilot Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* (March 5, 2017) and the statutory factors set forth in Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615.

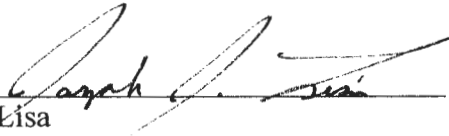
NOW, THEREFORE, PURSUANT TO Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE THOUSAND**

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TWO HUNDRED AND SIXTY-SEVEN DOLLARS (\$1,267), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Aug. 2, 2017
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Peter del Cardayre
2702 W. Grace Street
Richmond, VA 23220

Respondent,

2702 W. Grace Street
Richmond, VA 23220

Facility.

)
) DOCKET NO.: TSCA-03-2017-0155
)
) Proceeding Under Section 16(a) of the
) Toxic Substances Control Act, 15 U.S.C.
) Section 2615(a)

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CERTIFICATE OF SERVICE


I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery: Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail: Channing J. Martin
Williams Mullen
Williams Mullen Center
200 South 10th St., Suite 1600
P.O. Box 1320
Richmond, Virginia 23219

AUG 07 2017

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III



We recommend that you sign the attached Final Order assessing one thousand two hundred and sixty-seven dollars (\$1,267) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of Office of Regional Counsel for further processing.

Attachments

cc: Channing J. Martin
Williams Mullen
Williams Mullen Center
200 South 10th St., Suite 1600
P.O. Box 1320
Richmond, Virginia 23219
Phone: (804) 420-6422
E-mail: cmartin@williamsmullen.com