

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

RECEIVED BY OALJ
2013 MAR -1 PM 12:04

-----X
In the Matter of :
 :
PZ Painting, : CONSENT AGREEMENT
 : AND
 Respondent. : FINAL ORDER
 :
 : Docket No.
 Proceeding under Section 16(a) of : TSCA-02-2012-9170
 the Toxic Substances Control Act. :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant") issued a "Complaint and Notice of Opportunity for Hearing" to PZ Painting ("Respondent") on September 26, 2012, bearing the docket number listed above. The Complaint alleged that Respondent had violated Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, set forth at 40 C.F.R. Part 745, Subpart E, relating to lead-based paint ("LBP") and the Renovation, Repair and Painting Rule ("RRP").

EPA and Respondent agree that settling this matter by entering into this CAFO is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to the provisions of 40 C.F.R. Part 22.

FINDINGS OF FACT

1. Respondent is PZ Painting.
2. Respondent's primary place of business is located at 15 Salter Street, Springfield, New Jersey 07081.
3. On or about June 7, 2012, duly designated representatives of the EPA conducted an inspection of Respondent's renovation activities at 18 Church Mall Road, Springfield, New Jersey 07081.
4. The inspection referenced in paragraph 3, above, is hereinafter referred to as "the inspection".
5. As a result of the inspection, EPA determined that Respondent, as a firm performing renovations, had failed to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with 40 C.F.R. §745.89; and (2) provide the owner of the dwelling unit with a "pamphlet" (as that term is defined in §745.83) which contains information regarding the hazards of lead and obtain a written acknowledgement of receipt from the owner of the unit in accordance with § 745.84(a)(1).
6. On December 6, 2012, the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent, as a firm that engages in renovations which may involve lead-based paint, 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.

2. The failures to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with §745.89; and (2) provide the owner of the unit with a pamphlet (as that term is defined in §745.83) which contains information regarding the hazards of lead and obtain a written acknowledgement of receipt from the owner of the unit in accordance with § 745.84(a)(1) are violations of Sections 15 and 409 of TSCA, 15 U.S.C. § 2614 and § 2689.

TERMS OF 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 comply with all applicable provisions of 40 C.F.R. Part 745, Subpart E.

2. 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 "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual determinations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the determinations set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **NINE HUNDRED EIGHTY DOLLARS (\$980.00)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, 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, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. 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: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) PZ Painting
- 7) Docket Number TSCA-02-2012-9170

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly

after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

and

Meghan Tierney, Lead Team
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-225
Edison, New Jersey 08837

a. Failure to pay the penalty in full 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.

b. Further, if payment is not received on or before the 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. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint issued in this matter. 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. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its

terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. 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.

6. 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 the Complaint and the Consent Agreement and Final Order, including the "Findings of Fact" section, above, and the "Conclusions of Law" section, above. Respondent further waives its right otherwise to contest all such determinations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

PZ Painting

RESPONDENT:

BY: 

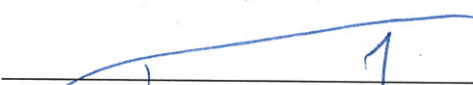
NAME: Michael R. Reifman

(PLEASE PRINT)

TITLE: ATTORNEY

DATE: 2/13/13

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007

DATE: FEBRUARY 20, 2013

In the Matter of PZ Painting
Docket Number TSCA-02-2012-9170

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 PZ Painting, bearing Docket Number TSCA-02-2012-9170. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Headquarters Hearing Clerk of EPA as required by Chief Administrative Law Judge Susan L. Biro's Prehearing Order dated January 3, 2013. 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.

DATE: February 26, 2013

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of PZ Painting
Docket Number TSCA-02-2012-9170

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 Pouch Mail:

Sybil Anderson
Headquarters Hearing Clerk
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, N. W.
Mail Code 1900L
Washington, DC 20460-2001

Copy by Pouch Mail:

The Honorable Susan L. Biro
Chief Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, N. W.
Mail Code 1900L
Washington, DC 20460-2001

Copy by Certified Mail Return Receipt Requested:

Michael Reitman, Esq.
Tobin, Reitman, Greenstein, Caruso, Wiener, Konray & Kessler
136 Central Avenue
Clark, New Jersey 07066

Dated: **FEB 28 2013**
New York, New York

Suzanne M. Baer

In the Matter of PZ Painting, Respondent
Docket No. TSCA-02-2012-9170

CERTIFICATE OF SERVICE

I certify that the foregoing **Consent Agreement and Final Order**, dated March 1, 2013, was sent this day in the following manner to the addressees listed below.



Knolyn R. Jones
Legal Staff Assistant

Dated: March 1, 2013

Original And One Copy To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy By Regular Mail To:

Stuart Keith, Esquire
Office of Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Michael R. Reitman, Esquire
Tobin, Reitman, Greenstein, Caruso,
Wiener, Konray & Kessler
136 Central Avenue
Clark, NJ 07066