

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
 :
Star Painting Services, LLC :
 :
Respondent. :
 :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2015-9166

REGIONAL HEARING
CLERK

2015 JAN - 6 AM 8 28

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This is an administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. § 2615(a).

Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. The Respondent, Star Painting Services, LLC ("Star Painting"), is a company engaged in activities relating to painting and painting renovations. On or about July 18, 2013, EPA inspected the renovation activities that had been undertaken by Star Painting at 64 Sagamore Drive, New Providence, New Jersey, 07974 and concluded that Star Painting had likely 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 ("RRP") Rule.

EPA and Star Painting have subsequently engaged in settlement discussions with respect to the alleged violations that EPA discovered during the course of its July 2013 inspection of Star Painting's renovation activities at 64 Sagamore Drive, New Providence, New Jersey, 07974. The Parties have agreed to address the issues without the need for EPA to issue a formal Complaint. Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). Both the Complainant, the Director of EPA Region 2's Division of Enforcement and Compliance Assistance, and the Respondent, Star Painting, have agreed that entering into this CA/FO is an appropriate means of resolving the alleged noncompliance with the RRP Rule.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated finding of fact or conclusions of law have been made. Star Painting neither admits nor denies EPA's Findings of Fact or Conclusions of Law set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Star Painting.
2. Star Painting's primary place of business is situated at 226 Main Avenue, Stirling, New Jersey 07980.
3. Star Painting, as firm that engages (or has engaged) 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.
4. On or about July 18, 2013, duly designated representatives of the EPA conducted an inspection of Star Painting's renovation activities at 64 Sagamore Drive, New Providence, New Jersey, 07974.
5. Following that inspection, EPA issued an Information Request Letter ("IRL") to Star Painting on or about January 16, 2014.
6. On or about March 25, 2014, Star Painting submitted its response to EPA's IRL.
7. As a result of the July 2013 Inspection and Star Painting's March 2014 response to EPA's IRL, EPA determined that Star Painting, as a firm that performs, offers or claims to perform renovations had in 2013: (a) failed to obtain initial certification from EPA, under 40 C.F.R. § 745.89(a) pursuant to 40 C.F.R. § 745.81(a)(2)(ii); (b) failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area pursuant to 40 C.F.R. § 745.85(a)(1); (c) failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C); (d) failed to clean the work area until no dust, debris or residue remained after the renovation pursuant to 40 C.F.R. § 745.85(a)(5); and (e) failed to maintain records, pursuant to 40 C.F.R. § 745.86(b).

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and voluntarily and knowingly accepted by Star Painting, that Star Painting, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously (a) admits the jurisdictional allegations contained in the Preliminary Statement of the CA/FO; (b) neither admits nor denies the Findings of Fact And Conclusions Of Law stated above; (c)

consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Star Painting, and voluntarily and knowingly accepted by Star Painting, that the Respondent shall comply with the following terms and conditions:

1. Commencing on the effective date of the Order, Star Painting shall hereinafter maintain compliance with all applicable regulations set forth at 40 C.F.R. Part 745 Subpart E.
2. Respondent hereby certifies, at the time of its signature to this document, that, to the best of its knowledge and belief, it is in compliance with all applicable requirements of 40 C.F.R. Part 745, Subpart E.
3. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Star Painting's obligation to comply with all applicable federal, state and local laws and regulations relating to the renovation, repair or painting work involving LBP.
4. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Star Painting for having made any material misrepresentations or for having provided materially false information in any document.
5. The settlement embodied in this Consent Agreement is based in part on financial information submitted to the Complainant on or about August 27, 2014 by the Respondent, including copies of the individual tax return of the key individual in Star Painting for the calendar year 2011, corporate tax returns filed by Star Painting for the calendar years 2012 and 2013, and Star Painting's sales and use tax quarterly return for the first quarter of 2014. By such representative's signature to this Consent Agreement, Respondent certifies that the information submitted to EPA regarding the Respondent's financial condition is accurate and not misleading.
6. Star Painting shall pay a civil penalty to EPA in the total amount of FIVE THOUSAND FIVE HUNDRED TEN DOLLARS (\$5,510). Such payment shall be made in installments by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then each check must be received and shall be made payable to the "**Treasurer, United States of America,**" as follows:
 - (a) within 45 days of the date of signature of the Final Order at the end of this document a check in the amount of TWO THOUSAND DOLLARS (\$2,000.00).
 - (b) within six months of the date of the date of signature of the Final Order

at the end of this document a check in the amount of ONE THOUSAND ONE HUNDRED SEVENTY dollars (\$1,170.00).

(c) within nine months of the date of the date of signature of the Final Order at the end of this document a check in the amount of ONE THOUSAND ONE HUNDRED SEVENTY dollars (\$1,170.00).

(d) within twelve months of the date of the date of signature of the Final Order at the end of this document a check in the amount of ONE THOUSAND ONE HUNDRED SEVENTY dollars (\$1,170.00).

7. Each 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, the installment payments may be made 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 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: Star Painting Services, LLC
- 7) Docket Number: TSCA-02-2015-9166

Whether paid by check or EFT, each installment payment must be received on or before the date specified for that installment (the date by which the installment payment must be received shall hereafter be referred to as the "due date"). Promptly after each installment payment has been made, Respondent shall send copies of this installment payment or furnish reasonable proof that such installment 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 each installment 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.

(c) If Respondent fails to make any of the above installment payments according to the terms and schedule set forth herein, Respondent shall, in addition to any other penalties provided for herein, pay a stipulated penalty of one thousand dollars (\$1,000.00) for any installment penalty payment that is not timely paid in the full amount due. Respondent shall follow the payment instructions set out in paragraphs "6" and "7" of this section for any stipulated payment penalty paid. If Respondent demonstrates good cause for its failure to make a payment on time, EPA may in its sole discretion, in writing, excuse Respondent from payment of the stipulated penalty.

8. This Consent Agreement is being voluntarily entered into by the parties in full and final settlement (subject to payment of all penalties due and the accuracy of the certification in paragraph "5" of the Consent Agreement) of all civil liabilities that attach or might have attached under the Act to Star Painting as a result of the violations described in paragraph "7" of the above Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
9. The provisions of this Consent Agreement shall be binding upon both Complainant and Star Painting and their authorized representatives and successors or assigns.
10. Star Painting explicitly waives its right to request or to seek any hearing on the terms and conditions set forth in the Consent Agreement and the accompanying Final Order and/or the Findings of Fact and Conclusions of Law, above.

11. Star Painting waives any rights 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.
12. The undersigned signatory for Star Painting certifies that it is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
13. Star Painting consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
14. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
15. Each party hereto agrees to bear its own costs and fees in this matter.

STAR PAINTING SERVICES, LLC

RESPONDENT:

BY: N. K. Bhargava
 NAME: Narendra Bhargava
 (PLEASE PRINT)
 TITLE: President
 DATE: 12/2/2014

COMPLAINANT:

Dore LaPosta
 Dore LaPosta, Director
 Division of Enforcement and
 Compliance Assistance
 U.S. Environmental Protection
 Agency, Region 2
 290 Broadway
 New York, New York 10007
 DATE: December 31, 2014

In the Matter of Star Painting Services, LLC
Docket Number TSCA-02-2015-9166

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 Star Painting Services, LLC, bearing Docket Number TSCA-02-2015-9166. 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 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.

DATE: January 5, 2015

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 Star Painting Services, LLC
Docket Number TSCA-02-2015-9166

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. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Caralyn E. Blaszk, Esq.
Spector & Ehrenworth
Attorney for Respondent
30 Columbia Turnpike, Ste. 202
Florham Park, New Jersey 07932-2261

Dated: 1/5/15
New York, New York

