

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

October 05, 2022 @ 11:44am

USEPA – Region II

Regional Hearing Clerk

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 In the Matter of :  
 :  
**Oasis Painting & Wallcovering Co.,** :  
 :  
 Respondent. :  
 :  
 Proceeding under Section 16(a) of :  
 the Toxic Substances Control Act. :  
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**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

Docket No. TSCA-02-2022-9171

**COMPLAINT**

This is a civil administrative action instituted pursuant to § 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant’s preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, which were promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

Complainant in this proceeding, the Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

**STATUTORY AND REGULATORY BACKGROUND**

1. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV-Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.
2. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.
3. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to TSCA include recordkeeping and reporting requirements to ensure effective implementation.
4. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail or refuse to comply with these sections of TSCA, as well as all other provisions, rules or orders under Subchapter IV of TSCA.

5. In 1996, the EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. In 1998, the EPA promulgated regulations to implement Section 406(b) and Section 407 of TSCA, 15 U.S.C. §§ 2686(b) and 2687. These regulations were set forth at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. In 2008, the EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending and recodifying regulations at 40 C.F.R. Part 745, Subparts E (“Renovation, Repair, and Painting Rule” or “RRP Rule”) and L (“Abatement Rule”), and adding additional regulations at 40 C.F.R. Subpart L. *See* Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

6. The RRP Rule establishes work practice standards for renovations that disturb paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

7. Forty C.F.R. §§ 745.80 and 745.82(a) provide that the RRP Rule applies to all renovations performed for compensation in target housing and child-occupied facilities.

8. The regulation at 40 C.F.R. § 745.83 defines “renovation,” in part, as 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. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (*e.g.*, modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (*e.g.*, walls, ceilings, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

9. Forty C.F.R. § 745.83 further defines “minor repair and maintenance activities,” in part, as activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

10. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

11. The regulation at 40 C.F.R. § 745.83 defines “firm” as 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.

12. The regulation at 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

14. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, in conjunction with the implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$43,611 for violations that occur or occurred after November 2, 2015, and are assessed on or after January 2, 2022. *See also* 87 FR 1678, Jan. 12, 2022.

### **GENERAL FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

15. Respondent is Oasis Painting & Wallcovering Co. (“Oasis” or “Respondent”).

16. Respondent is a corporation organized pursuant to the laws of the State of New Jersey.

17. Respondent at all times relevant herein was a “person” as that term is defined at 40 C.F.R. § 745.83.

18. Respondent’s primary place of business is located at 103 Union Street, Lodi, New Jersey 07644.

19. At all times relevant, Respondent was certified by EPA (Certification # NAT-94630-2) to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 C.F.R. Part 745.89.

20. Via an invoice dated July 26, 2019, Respondent offered to perform renovations, specifically scraping, sanding, and painting of the exterior (including “Trim, Railings, Porch, Ceiling, Gutters/Leaders and Exposed Windows”) of a multi-family home located at 261 Willow Avenue, Garwood, New Jersey (“Willow House”) for \$8200.

21. The Willow House was built in 1920.

22. The Willow House is “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and the RRP Rule.

23. Starting on or about August 14, 2019, Respondent began scraping all loose and scaling paint from the exterior of the Willow House.

24. On or about August 16, 2019, Respondent was paid \$8200 to perform renovations,

specifically scraping, sanding and painting of the exterior (including “Trim, Railings, Porch, Ceiling, Gutters/Leaders and Exposed Windows”) of the Willow House

25. On or about August 19, 2019, an inspector from the Westfield New Jersey Regional Health Department (“Westfield Health Department”) observed improper power sanding by Respondent on the exterior of the Willow House and issued a verbal stop work order. The Health Department inspector took a paint chip from the site which was later confirmed to be positive for lead.

26. On or about August 19, 2019, EPA received a referral from the Westfield Health Department regarding Oasis’ conduct at the Willow House.

27. On August 20, 2019, duly designated EPA inspectors conducted an on-site inspection at the Willow House (“EPA Inspection”) during which they observed Oasis employees painting the house and the absence of warning signs, inadequate ground and window coverings, and paint chips on the ground.

28. The EPA inspectors who performed the EPA inspection were federally credentialed and presented their federal credentials and a copy of the Notice of Inspection to Respondent’s on-site employee at the start of the inspection

29. On or about September 13, 2019, EPA sent an Information Request Letter (“IRL”) to Juan Sanchez, Oasis Painting & Wallcovering Co., 103 Union Street, Lodi, New Jersey 07644, requesting information regarding the work performed at the Willow House and his company’s compliance with the RRP Rule.

30. On October 1, 2019, Juan Sanchez, on behalf of Oasis Painting & Wallcovering Co., submitted to EPA a certified response to the IRL (the “IRL Response”).

31. Respondent was paid to scrape, sand, and paint the exterior of the Willow House.

32. Respondent is, and at all times relevant to this Complaint was, a “firm” contracted to perform “renovation,” as those terms are defined at 40 C.F.R § 745.83.

33. Respondent’s work at the Willow House was a “renovation for compensation” as specified in 40 C.F.R. § 745.82(a).

34. Respondent’s renovation work at the Willow House was performed on the exterior of the entire structure, specifically, but not limited to the siding, trim, railings, porch ceiling, and windows.

35. In the course of Respondent’s renovation of the Willow House, Respondent disturbed more than twenty (20) square feet of exterior painted surfaces.

36. Respondent and the work it performed at the Willow House are subject to the regulations and requirements pertaining to Residential Property Renovation promulgated pursuant to 15 U.S.C. § 2682(c)(3), and set forth at 40 C.F.R. Part 745, Subpart E.

COUNT 1

**Information Distribution: Failure to provide the EPA-approved lead hazard information pamphlet for common area renovation**

37. Paragraphs 1 through 36 are realleged and incorporated as if fully set forth herein.

38. Pursuant to 40 C.F.R. § 745.84(b)(1), a firm performing a renovation for compensation in a common area of multi-unit target housing must, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82, provide the owner with an EPA-approved lead hazard information pamphlet no more than sixty (60) days before beginning the renovation, and obtain, from the owner, a written acknowledgment that the owner has received the pamphlet OR obtain a certificate of mailing at least 7 days prior to the renovation.

39. None of the exceptions identified in 40 C.F.R. § 745.82 applied to the renovations of the Willow House.

40. In the IRL Response, Respondent wrote “Oasis Painting did not provide the owner of the property with the ‘Renovate Right’ [pamphlet]. Oasis Painting never dealt with the owner directly.”

41. Respondent did not provide copies of a written acknowledgment from the owner that the owner had received an EPA-approved lead hazard pamphlet or a certificate of mailing.

42. Respondent failed to provide the owner of the property with an EPA-approved lead hazard information pamphlet.

43. Failure to provide a lead-hazard information pamphlet prior to performing a renovation is a violation of 40 C.F.R. § 745.84(b)(1).

44. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.84(b)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 2

**Occupant Protection: Failure of a firm to post signs**

45. Paragraphs 1 through 44 are realleged and incorporated as if fully set forth herein.

46. Pursuant to 40 C.F.R. § 745.85(a)(1), renovation firms must 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. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and post-renovation cleaning verification have been completed.

47. During the EPA Inspection, EPA inspectors observed that there were no warning signs posted on the property.

48. In the IRL Response, Respondent wrote, “No informational signs were posted on the

property prior to start of work.”

49. Respondent failed to post warning signs at the Willow House as required by 40 C.F.R. § 745.85(a)(1).

50. Failure to post warning signs while a renovation is being performed is a violation of 40 C.F.R. § 745.85(a)(1).

51. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.85(a)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 3

**Containing the Work Area: Failure to cover the ground with plastic sheeting**

52. Paragraphs 1 through 51 are realleged and incorporated as if fully set forth herein.

53. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), firms conducting renovations must, before beginning the renovation, cover the ground with plastic sheeting or other disposable impermeable material extending ten (10) feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten (10) feet of such ground covering.

54. Photos of the Willow House worksite taken by the Westfield Health Department inspector on August 19, 2019, show that plastic sheeting or other disposable impermeable material was not in place at the time of the inspection.

55. During the EPA Inspection at the Willow House on or about August 20, 2019, EPA inspectors observed no plastic sheeting or other disposable impermeable material in place. The inspectors took photographs of canvas drop cloths on the ground as well as paint chips on the bare ground (driveway) next to the drop cloths.

56. For the renovation conducted at the Willow House, Respondent did not cover the ground with plastic sheeting or other disposable impermeable material demonstrating compliance with the RRP Rule.

57. Failure to cover the ground with plastic sheeting or other disposable impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

58. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.85(a)(2)(ii)(C) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 4

**Prohibited and Restricted Practices: Use of unconfined power sanders**

59. Paragraphs 1 through 58 are realleged and incorporated as if fully set forth herein.

60. Pursuant to 40 C.F.R. § 745.85(a)(3)(ii), firms performing renovations are prohibited from the use of machines that remove lead-based paint through high-speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment.

61. On or about August 19, 2019, an inspector from the Westfield Health Department observed Respondent performing unconfined power sanding of the exterior of the Willow House.

62. On October 7, 2019, Juan C. Sanchez, as principal of Oasis, pled guilty and paid a fine to the Municipal Court of Garwood, New Jersey for two (2) violations of Garwood Board of Health Code Section 8, Chapter 7-7.2B for performing unconfined power sanding at the Willow House on August 16 and August 19, 2019.

63. During the renovation of the Willow House, Respondent employed a prohibited work practice, specifically, the use of an unconfined high-speed operation sanding machine.

64. The use of such a machine during a renovation is a violation of 40 C.F.R. § 745.85(a)(3)(ii).

65. Respondent's failure or refusal to comply with 40 C.F.R. § 745.85(a)(3)(ii) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

#### COUNT 5

##### **Failure or refusal to establish or maintain records**

66. Paragraphs 1 through 65 are realleged and incorporated as if fully set forth herein.

67. Pursuant to 40 C.F.R. § 745.87(b), firms must establish and maintain records documenting compliance with the Residential Property Renovation requirements of Subpart E.

68. In the IRL Response, in reply to Question 13 of the IRL, which asked Respondent to provide records documenting that lead-safe work practice standards were followed at the Willow House renovation, Respondent stated that "basic construction work safety measures were followed but not documented."

69. In the IRL Response, in reply to Question 17 of the IRL, which asked for copies of records of compliance with the RRP Rule provided to the owner/occupant of the residential dwelling, Respondent stated that it did not provide such documentation.

70. For the renovation of the Willow House, Respondent failed to establish or maintain records documenting compliance with the RRP Rule.

71. Failure to establish or maintain records documenting compliance with the RRP Rule is a violation of 40 C.F.R. § 745.87(b).

72. Respondent's failure or refusal to comply with 40 C.F.R. § 745.87(b) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 6

**Failure of a firm to ensure on-the-job training is provided to uncertified workers**

73. Paragraphs 1 through 72 are realleged and incorporated as if fully set forth herein.

74. Pursuant to 40 C.F.R. § 745.89(d)(1), firms must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

75. Pursuant to 40 C.F.R. § 745.90(b)(2), a certified renovator assigned to a renovation must provide training to workers on the work practices required by § 745.85(a)

76. During EPA's inspection at the Willow House on or about August 20, 2019, EPA inspectors observed a number of workers on site.

77. In the IRL Response, Respondent identified several workers who were not certified renovators and worked on the Willow House renovation. Respondent further stated, "[n]o training was provided to the uncertified workers, aside from basic painting and prepping instructions for the particular job."

78. For the renovation of the Willow House, Respondent failed to ensure all workers onsite were either certified renovators or trained by a certified renovator in the required work practices.

79. Failure to ensure that on-the-job training is provided to uncertified workers in the required work practices is a violation of 40 C.F.R. § 745.89(d)(1).

80. Respondent's failure or refusal to comply with 40 C.F.R. § 745.89(d)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 7

**Failure of a firm to ensure that a certified renovator discharges all of the certified renovator responsibilities**

81. Paragraphs 1 through 80 are realleged and incorporated as if fully set forth herein.

82. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator discharges all of the certified renovator responsibilities.

83. In the IRL Response, Respondent identified a certified renovator assigned to the Willow House renovation.

84. In the IRL Response, Respondent provided no records establishing that this identified certified renovator was assigned to the Willow House renovation.

85. Pursuant to 40 C.F.R. § 745.85(b)(2), a certified renovator must ensure that a



renovator performs a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris, or residue by re-cleaning if necessary, and to perform another visual inspection.

86. In the IRL Response, Respondent replied “No” to Question 16 of the IRL, which asked, “[w]as post-renovation cleaning performed[.]”

87. For the renovation of the Willow House, Respondent failed to ensure that all of the certified renovator’s responsibilities were discharged.

88. Failure to ensure that a certified renovator’s responsibilities are discharged under the RRP Rule is a violation of 40 C.F.R. § 745.89(d)(2).

89. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.89(d)(2) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

### **PROPOSED CIVIL PENALTY**

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, in conjunction with the implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$43,611 for violations that occur or occurred after November 2, 2015, and are assessed on or after January 2, 2022. *See also* 87 Fed. Reg. 1678, Jan. 12, 2022.

For purposes of determining the amount of a civil penalty to be assessed, TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent’s ability to pay, the effect on their ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), and EPA’s *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (LBP Consolidated ERPP). The LBP Consolidated ERPP sets forth a general penalty assessment policy for violations of Section 409 of TSCA, including violations of the RRP Rule. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to particular cases.

Based upon the facts alleged in this Complaint, and in consideration of the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent’s ability to pay, the effect on their ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

Count 1: Failure to Provide the Owner with the Lead Hazard Information Pamphlet

Circumstance Level: 1b  
Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$7,740

1 Significant violation @ \$ 7,740 x 1.7736 adjustment multiplier = \$13,727.66

Count 2: Failure to Post Signs Clearly Defining the Work Area

Circumstance Level: 1b  
Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$7,740

1 Significant violation @ \$ 7,740 x 1.7736 adjustment multiplier = \$13,727.66

Count 3: Failure to Cover the Ground with Plastic Sheeting

Circumstance Level: 2a  
Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$20,400

1 Significant violation @ \$20,400 x 1.16293 adjustment multiplier = \$23,723.77

Count 4: Prohibited Practice: Use of Machines that Operate at High-Speed to Remove Lead-based Paint

Circumstance Level: 1a  
Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$25,500

1 Significant violation @ \$25,500 x 1.16293 adjustment multiplier= \$29,654.72

Count 5: Failure to Establish or Maintain Records Documenting Compliance with Subpart E

Circumstance Level: 3a  
Total Number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$15,300

1 Significant violation @ \$15,300 x 1.16293 adjustment multiplier = \$17,792.83

Count 6: Failure to Ensure On-the-Job Training of Uncertified Workers

Circumstance Level: 3a

Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$15,300

1 Significant violation @ \$15,300 x 1.16293 adjustment multiplier = \$17,792.83

Count 7: Failure to Ensure a Certified Renovator Discharges All Certified Renovator Responsibilities

Circumstance Level: 3a  
Total number of violations: 1  
Extent Category: Significant  
Penalty Per Violation: \$15,300

1 Significant violation @ \$15,300 x 1.16293 adjustment multiplier = \$17,792.83

**TOTAL PROPOSED PENALTY** **\$134,212.30**

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation were originally set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017, and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, NY 10007-1866

The attached Standing Order from the Regional Judicial Officer of U.S. Environmental Protection Agency, Region 2, dated August 3, 2020, authorizes electronic service of certain Part 22 documents, including the Respondent's Answer to this Complaint (Attachment A). Respondent may therefore serve

its Answer upon the Regional Hearing Clerk electronically to the following address:

[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

A copy of Respondent's Answer, including any request for hearing, must also be sent to Complainant. 40 C.F.R. § 22.15(a). Complainant has designated Assistant Regional Counsel (ARC) Lauren Charney to receive service on her behalf. Pursuant to the attached Consent from Complainant, dated September 30, 2022 (Attachment B), Respondent may send documents filed in this matter to ARC Charney electronically: [charney.lauren@epa.gov](mailto:charney.lauren@epa.gov).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of section 2614 ... of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity ... for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. *See* 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

#### C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If

Respondent fails to file a timely [i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer(s) should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk.

If filing by the United States Postal Service, such filings should be addressed to:

Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. Mail Code 1900R  
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Headquarters Hearing Clerk  
Office of the Administrative Law Judges  
Ronald Reagan Building, Room M1200  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Alternatively, Respondent may register to use the EPA e-filing system:

[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf/HomePage?ReadForm](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm)

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board ("EAB") (see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board, Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these

[rules] for the filing of a responsive document.” Note that the forty-five (45) day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent’s ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lauren P. Charney, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 2  
(212) 637-3181  
[charney.lauren@epa.gov](mailto:charney.lauren@epa.gov)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent’s requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent’s obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the

proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entry into a settlement through the signing of such Consent Agreement and its compliance with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements and to maintain such compliance.

**RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following address:

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 of the name and docket number of this case, set forth in the caption on the first page of this document.

Alternatively, payment may be made by Electronic Fund Transfer ("EFT") via Fedwire 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) Name of Respondent: **Oasis Painting & Wallcovering Co.**
- 7) Docket Number **TSCA-02-2022-9171**

Proof of payment shall be filed with the Regional Hearing Clerk, Region 2 (at the New York address noted above) and a copy provided to the EPA Assistant Regional Counsel identified previously

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil

proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**For** Dore F. LaPosta, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007-1866

To: Juan C. Sanchez  
Oasis Painting & Wallcovering Co.  
103 Union Street  
Lodi, NJ 07644  
oasispainting@gmail.com

Attachments



CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Complaint, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one email copy to:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, New York 10007-1866  
Maples.karen@epa.gov

Copy by Certified Mail Return Receipt Requested:

Juan C. Sanchez  
Oasis Painting & Wallcovering Co.  
103 Union Street  
Lodi, New Jersey 07644  
oasispainting@gmail.com

Dated: \_\_\_\_\_  
New York, New York

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