



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 10 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article Number: 7016 1370 0001 3673 9495

Mr. Wilbert Aguero
C&W Painting and Carpentry Inc.
1052 Lafayette Avenue Ext.
Hawthorne, New Jersey 07506

Re: In the Matter of **C&W Painting and Carpentry Inc.**
Docket No. TSCA-02-2019-9167

Dear Mr. Aguero:

Enclosed is a Complaint and Notice of Opportunity for Hearing (the Complaint) and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), Section 402, and regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 745, Subpart E.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed is a copy of the "Consolidated Rules of Practice" (CROP), which govern this proceeding and are codified at 40 C.F.R. Part 22 (Amended May 22, 2017). For your general information, I have also enclosed a "U.S. EPA Small Business Resources Information Sheet," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I therefore have also enclosed a brochure on "The 2015 Update to the 1998 U.S. EPA's Supplemental Environmental Projects Policy." Please note that SEPs are only available as part of a negotiated settlement and are not available if this case is resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dore LaPosta", with a stylized flourish at the end.

Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

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In the Matter of :
 :
 :
 C&W Painting and Carpentry Inc., : **COMPLAINT AND NOTICE OF**
 : **OPPORTUNITY FOR HEARING**
 :
 :
 Respondent. : Docket No. TSCA-02-2019-9167
 :
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
 :
----- X

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 the 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) and L (Abatement Rule), and adding additional regulations at 40 C.F.R. Part 745 Subpart L. *See Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

6. The Renovation, Repair, and Painting (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” 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.

9. 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).

10. 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.

11. 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

or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

12. 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.

13. 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 \$37,500 for violations that occur after January 12, 2009.

GENERAL FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

14. Respondent is C&W Painting and Carpentry Inc. (“C&W Painting” or “Respondent”).

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

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

17. Respondent’s primary place of business is located at 1052 Lafayette Avenue Ext., Hawthorne, New Jersey 07506.

18. On or about July 16, 2015, EPA received a tip/complaint from an individual which alleged that workers from “C& W Painting LLC or C& W Painting & Carpentry Inc.” were performing renovations at 237 Pasadena Place, Hawthorne, NJ (“the Pasadena House”) in a manner that created a lead dust condition at the property and on neighboring properties.

19. On or about July 15, 2015, representatives from the Borough of Hawthorne (BOH) and the Paterson Division of Health (PDOH) inspected the Pasadena House work site.

20. The BOH inspector observed two men on the roof of the garage of the Pasadena House sanding paint on the house.

21. The PDOH inspector collected two soil samples from the Pasadena House property and three dust wipe samples from an adjacent property.

22. A July 21, 2015, analysis by Schneider Laboratories Global, Inc. (an EPA accredited lab for lead analysis) indicated that both the soil samples and two of the dust wipe samples collected by PDOH tested positive for lead.

23. The Pasadena House was built in 1951.

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

25. On or about July 29, 2015, EPA sent an Information Request Letter (“IRL”) to Mr. Wilbert Aguero, C&W Painting LLC, 1052 Lafayette Avenue EXT, Hawthorne, New Jersey 07506 requesting information regarding the work performed at the Pasadena House and his company’s compliance with the RRP Rule.

26. On September 24, 2015, Wilbert Aguero, on behalf of C&W Painting and Carpentry, Inc., submitted to EPA a response to the IRL (the “IRL Response”).

27. Respondent’s renovation work at the Pasadena House was performed on the exterior of the entire structure.

28. Starting on or about July 12, 2015, Respondent removed and replaced exterior chipped paint at the Pasadena House.

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

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

31. In the course of Respondent’s renovation of the Pasadena House, Respondent disturbed more than twenty square feet of painted surface.

32. Respondent and the work it performed at the Pasadena 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

Failure to Obtain Initial Certification from EPA

33. Paragraphs 1 through 32 are realleged and incorporated as if fully set forth herein.

34. Under 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for compensation on target housing on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. In addition, 40 C.F.R. § 745.89(a)(1) requires firms that perform renovations on target housing for compensation to apply to EPA for certification to perform renovations.

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

36. At the time of Respondent's performance of renovations on the Pasadena House, Respondent had neither applied to EPA for certification nor obtained such certification.

37. Respondent applied for RRP firm certification on July 20, 2015 and received certification on July 23, 2015 (NAT-F156125-1).

38. Failure to obtain EPA certification prior to performing a renovation for compensation is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

39. Respondent's failure or refusal to comply with 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 2

Failure to Contain Debris, Dust and Waste (CDDW)

40. Paragraphs 1 through 39 are realleged and incorporated as if fully set forth herein.

41. Pursuant to 40 C.F.R. § 745.85(a)(2), renovation firms must isolate and contain the work areas so that no dust or debris leaves the work area while the renovation is being performed.

42. Forty C.F.R. § 745.85(a)(2)(ii)(D) specifies that renovation firms may need to take extra precautions in order to prevent contamination of adjacent buildings and properties.

43. The PDOH soil and dust samples taken during Respondent's performance of renovation work at the Pasadena House showed contamination outside the work area and extending to an adjacent property.

44. Respondent failed to contain the work area at the Pasadena House as required by 40 C.F.R. § 745.85(a)(2).

45. Failure to isolate and contain the work areas so that no dust or debris leaves the work area while the renovation is being performed is a violation of 40 C.F.R. § 745.85(a)(2).

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

COUNT 3

Failure to Retain Records of Compliance

47. Paragraphs 1 through 46 are realleged and incorporated as if fully set forth herein.

48. Pursuant to 40 C.F.R. § 745.86(a), firms conducting renovations must retain and make available to EPA upon request all records necessary to demonstrate compliance with the requirements of the RRP Rule for a period of three (3) years following completion of renovation activities.

49. In the IRL, EPA inquired whether Respondent established records documenting that lead-safe work practices were followed, to which question Respondent replied “Yes” in the IRL Response.

50. In the IRL, EPA requested that Respondent submit any records documenting that lead-safe work practices were followed.

51. As of September 1, 2019, Respondent has not submitted to EPA documentation of the use of lead-safe work practices, post-renovation cleaning, and the assignment of a certified renovator for the renovation at the Pasadena House.

52. For the renovation of the Pasadena House, Respondent did not retain and make available to EPA upon request records demonstrating compliance with the RRP Rule.

53. Failure to establish, retain, and make available to EPA upon request all records necessary to demonstrate compliance with the RRP Rule is a violation of 40 C.F.R. § 745.86(a).

54. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.86(a) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 4

Failure to Provide On-the-Job Training to Uncertified Workers

55. Paragraphs 1 through 54 are realleged and incorporated as if fully set forth herein.

56. Pursuant to 40 C.F.R. §§ 745.86(b)(6) and 745.89(d)(1), firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained on-the-job by a certified renovator.

57. In the IRL, EPA inquired whether Respondent assigned a certified renovator (as defined by 40 C.F.R. § 745.83) to the renovation on the Pasadena House. In the IRL Response, Respondent replied “Yes” to the question and identified Wilbert Aguero (Certificate Number: R-I-18499-11-00065) as the assigned renovator.

58. Wilbert Aguero is the only certified renovator in Respondent’s employ.

59. During the July 15 inspection, the BOH inspector observed more than one worker sanding paint at the Pasadena House.

60. In the IRL, EPA inquired whether a certified renovator performed on-the-job training for uncertified workers. In the IRL Response, Respondent replied “No” to the question.

61. For the renovation of the Pasadena House, Respondent did not ensure that all individuals performing renovation activities on behalf of the firm were either certified renovators or had been trained by a certified renovator.

62. Failure to ensure that all individuals performing renovation activities on behalf of the firm were either certified renovators or had been trained by a certified renovator is a violation of 40 C.F.R. § 745.89(d)(1).

63. 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.

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 \$37,500 for violations that occur between January 12, 2009 and November 2, 2015.

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 its 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 its 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 Obtain Initial Firm Certification from EPA

Circumstance Level: 3a

Total number of violations: 1

Extent Category: Minor

Penalty Per Violation: Minor \$4,500

1 Minor violation X \$ 4,500 = \$4,500

Count 2: Failure to Contain Debris, Dust, and Waste

Circumstance Level: 2a

Total number of violations: 1

Extent Category: Minor

Penalty Per Violation: Minor \$6,000

1 Minor violation X \$6,000 = \$6,000

Count 3: Failure Retain Records of Compliance

Circumstance Level: 6a

Total number of violations: 1

Extent Category: Minor

Penalty Per Violation: Minor \$600

1 Minor violation X \$600 = \$600

Count 4: Failure to Provide On-the-Job Training to Uncertified Workers

Circumstance Level: 3a

Total number of violations: 1

Extent Category: Minor

Penalty Per Violation: Minor \$4,500

1 Minor violation X \$ 4,500 = \$4,500

TOTAL PROPOSED PENALTY \$15,600

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 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 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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

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 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 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, addressed as follows:

If filing by the United States Postal Service:

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

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 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:

Karen L. Taylor, Esq.
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
(212)-637-3637
taylor.karen@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 their 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 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; and
- 7) Docket Number TSCA-02-2019-9167

A copy of the check or other instrument 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 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: 9/10/19



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

To: Mr. Wilbert Agüero
C&W Painting and Carpentry, Inc.
1052 Lafayette Avenue
Hawthorne, NJ 07506

Enclosures

In the Matter of C&W Painting and Carpentry Inc.

Docket Number TSCA-02-2019-9167

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 copy by hand to:

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

Copy by Certified Mail Return Receipt Requested:

Mr. Wilbert Aguero
C&W Painting and Carpentry Inc.
1052 Lafayette Avenue Ext.
Hawthorne, New Jersey 07506

Dated:

September 10, 2019
New York, New York



Yolanda Majette,
WTS Branch Secretary