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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
DIAMOND HOMES LLC, ) DOCKET NO. TSCA-10-2017-0159  
Meridian, Idaho, ) **CONSENT AGREEMENT**  
Respondent. )

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Diamond Homes LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail to comply with any rule promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682. Pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, EPA has promulgated rules governing lead-based paint activities, including certification of individuals and firms for renovations and work practice standards for renovations. These rules are codified at 40 C.F.R. Part 745, subpart E, Residential Property Renovation.

3.2. Under 40 C.F.R. § 745.87, failure 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.

3.3. 40 C.F.R. Part 745, Subpart E applies to all renovations performed for compensation in target housing.

3.4. “Target housing” is defined under Section 401(17) of TSCA, 15 U.S.C. § 2681(17), in part, as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities.”

3.5. “Person” is defined at 40 C.F.R. § 745.83 to mean “any natural or judicial person including any individual, corporation, partnership, or association.”

3.6. “Firm” is defined at 40 C.F.R. § 745.83 to mean “a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.”

3.7. “Renovation” is defined at 40 C.F.R. § 745.83 to mean “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces.” It includes the removal, modification or repair of painted surfaces or painted components; the removal of building components; and weatherization projects. It does not include minor repair and maintenance activities.

3.8. “Painted surface” is defined at 40 C.F.R. § 745.83 to mean “a component surface covered in whole or in part with paint or other surface coatings.”

3.9. “Component” or “building component” are defined at 40 C.F.R. § 745.83 to mean “specific design or structural elements or fixtures of a . . . residential dwelling that are distinguished from each other by form, function, and location.” They include interior components such as ceilings, crown molding, walls, doors, floors, windows and trim, and exterior components such as ceilings, soffits, fascias, rake boards, corner boards, siding, windowsills, casings, sashes and wells.

3.10. “Minor repair and maintenance activities” are defined at 40 C.F.R. § 745.83 to mean activities “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 the work does not involve window replacement or demolition of painted surface areas.”

3.11. “Renovator” is defined at 40 C.F.R. § 745.83 as “an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal program.”

3.12. Respondent is a corporation organized in the State of Idaho.

3.13. Respondent is therefore a “firm” within the meaning of 40 C.F.R. § 745.83.

3.14. In September 2016, Respondent performed work for compensation at a house located at 2807 West Gem Street, Boise, Idaho, which was built in 1951 (“the Gem Street Renovation”).

3.15. The Gem Street Renovation included demolition of exterior painted surface areas greater than 20 square feet, the removal of painted components, and the removal of building components.

3.16. Therefore, the Gem Street Renovation was a “renovation” on “target housing,” that Respondent performed, as these terms are as defined at 40 C.F.R. § 745.83.

#### COUNT 1

3.17. Under 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a), no firm may perform, offer, or claim to perform renovations in target housing, without certification from EPA.

3.18. Respondent did not obtain firm certification from EPA prior to conducting the Gem Street Renovation.

3.19. Respondent’s failure to obtain firm certification from EPA before performing the Gem Street Renovation is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

## COUNT 2

3.20. Under 40 C.F.R. § 745.89(d)(1), each firm performing renovations 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 40 C.F.R. § 745.90.

3.21. The individuals performing renovation activities at the Gem Street Renovation were not certified and had not been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

3.22. Respondent's failure to ensure that all individuals performing renovation activities on behalf of Respondent are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, is a violation of 40 C.F.R. § 745.89(d)(1).

## COUNT 3

3.23. 40 C.F.R. §§ 745.85(a)(1) and 745.89(d)(3) require firms to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area. The signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

3.24. During the Gem Street Renovation, Respondent failed to post signs clearly defining the work area and warning persons not involved in the renovation activities to remain outside the work area.

3.25. Respondent's failure to post warning signs is a violation of 40 C.F.R. §§ 745.85(a)(1) and 745.89(d)(3).

#### COUNT 4

3.26. Under 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3), firms conducting exterior renovations must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

3.27. During the Gem Street Renovation, Respondent did not cover the ground with plastic sheeting or other disposable impermeable material to collect falling paint debris.

3.28. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material to collect falling paint debris is a violation of 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3).

#### COUNT 5

3.29. Under 40 C.F.R. §§ 745.85(a)(4)(i) and 745.89(d)(3), waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

3.30. Respondent did not contain waste from the Gem Street Renovation in a manner that would prevent releases of dust and debris before the waste was removed from the work area.

3.31. Respondent's failure to contain the waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal is a violation of 40 C.F.R. §§ 745.85(a)(4)(i) and 745.89(d)(3).

#### ENFORCEMENT AUTHORITY

3.32. Under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$38,114 for each such violation, each day such a violation continues.

#### IV. TERMS OF SETTLEMENT

- 4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.
- 4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$7,199 (the "Assessed Penalty").
- 4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.
- 4.5. Payments under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
young.teresa@epa.gov

Maria Tartaglia  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
tartaglia.maria@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the Assessed Penalty are not subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the Assessed Penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.



4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/7/17

FOR RESPONDENT:

Rod Lamm

ROD LAMM, Owner  
Diamond Homes LLC

DATED:

8/11/17

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. TSCA-10-2017-0159
DIAMOND HOMES LLC,	)	
	)	<b>FINAL ORDER</b>
	)	
Meridian, Idaho,	)	
	)	
Respondent.	)	

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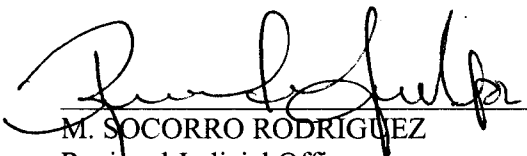
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16<sup>th</sup> day of August, 2017.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Diamond Homes LLC, Docket No.: TSCA-10-2017-0159**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Rod Lamm  
Owner  
Diamond Homes LLC  
534 East Kaibab Trail  
Meridian, Idaho 83646

DATED this 17 day of August, 2017.

  
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TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10