



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2013 AUG 15 P 5 45
REGIONAL HEARING
CLERK

August 15, 2013

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Mr. Phil Loria
President
Dura-Plex, Inc.
1681 Route 88
Brick, NJ 08837

Re: In the Matter of Dura-Plex, Inc.
Docket Number RCRA-02-2013-9166

Dear Mr. Loria:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced proceeding, signed by the Regional Judicial Officer.

Please arrange for the payment of the penalty according to the instructions given in the Order. If you have any questions, please call me at (212) 637-3220.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Rudolph Perez", written over a horizontal line.

Rudolph Perez
Assistant Regional Counsel
Office of Regional Counsel
Waste and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 AUG 15 P 5:46
REGIONAL HEARING
CLERK

-----X
In the Matter of

Dura-Plex, Inc.,

Respondent.

Proceeding under Section 16(a) of
the Toxic Substances Control Act.
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2013-9166

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. Section 22.13(b) that where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Section 22.18(b)(2) and (3).

On January 30, 2013, the Chief of the Pesticides and Toxic Substances Branch, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued an Opportunity to Show Cause to EPA for Potential Violations of the Toxic Substances Control Act ("SCL") to Dura-Plex, Inc. ("Respondent"). The SCL alleged that

Respondent may have violated Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, set forth at 40 C.F.R. Part 745, Subpart E, relating to lead-based paint ("LBP") and the Renovation, Repair and Painting ("RRP") Rule.

EPA and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT

1. Respondent is Dura-Plex, Inc.
2. Respondent's primary place of business is located at 1681 Route 88, Brick, New Jersey 08724.
3. On or about April 18, 2012, duly designated representatives of the EPA conducted an inspection of Respondent's renovation activities at a single-family house located at 651 Fort Plains Road in Howell, New Jersey 07731.
4. On or about April 30, 2012, duly designated representatives of the EPA visited Respondent's primary place of business and conducted an inspection of Respondent's records related to its renovation activities at the property mentioned in paragraph "3."
5. The inspections referenced in paragraphs "3" and "4," above, are hereinafter referred to as "the Inspections".
6. As a result of the Inspections, EPA determined that Respondent, as a firm performing renovations, had failed to: (1) apply to EPA and obtain firm certification prior to commencing any renovations; (2) obtain, from the owner, a written acknowledgement that the owner has received the "pamphlet" (as that term is defined in §745.83) which contains information regarding the hazards of lead; (3) post signs clearly defining the work area; (4)

contain waste from renovation activities to prevent releases of dust and debris; (5) store waste under containment at the conclusion of the workday; (6) retain required renovation records; and (7) ensure that a certified renovator was assigned to the renovation.

7. On February 20, 2013, the parties met for an informal settlement conference.

CONCLUSIONS OF LAW

1. Respondent, as a firm that engages in renovations which may involve lead-based paint, is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E.

2. The failures to: (1) apply to EPA and obtain firm certification prior to commencing any renovations in accordance with §745.89(a); (2) obtain, from the owner, a written acknowledgement that the owner has received the “pamphlet” (as that term is defined in §745.83) which contains information regarding the hazards of lead in accordance with 40 C.F.R. §745.84(a)(2)(i); (3) post signs clearly defining the work area in accordance with 40 C.F.R. §745.85(a)(1); (4) contain waste from renovation activities to prevent releases of dust and debris in accordance with 40 C.F.R. §745.85(a)(4)(i); (5) store waste under containment at the conclusion of the workday in accordance with 40 C.F.R. §745.85(a)(4)(ii); (6) retain required renovation records in accordance with 40 C.F.R. §745.86(b); and (7) ensure that a certified renovator was assigned to the renovation in accordance with 40 C.F.R. §745.89(d)(2), pursuant to 40 C.F.R. §745.81(a)(3), are violations of Sections 15 and 409 of TSCA, 15 U.S.C. § 2614 and § 2689.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of 40 C.F.R. Part 745, Subpart E.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations described in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual determinations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the determinations set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **FIVE THOUSAND THREE HUNDRED THIRTY DOLLARS (\$5,330.00)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Dura-Plex, Inc.
- 7) Docket Number TSCA-02-2013-9166

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the “due date”). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

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

and

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

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims described in Paragraph “6” of the “Findings of Fact” and paragraph “2” of

the "Conclusions of Law" set forth above. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the determinations contained in the "Findings of Fact" section and the "Conclusions of Law" section, above. Respondent further waives its right otherwise to contest all such determinations.

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

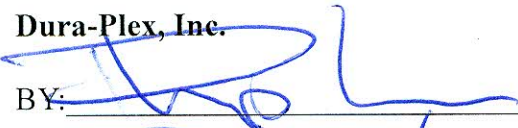
8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.


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

conditions set forth in this Consent Agreement.

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

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

RESPONDENT: **Dura-Plex, Inc.**
BY: 
NAME: PHILIP LOEIA
(PLEASE PRINT)
TITLE: V.P.
DATE: 7-23-13

COMPLAINANT: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency, Region 2
290 Broadway
New York, New York 10007
DATE: JULY 31, 2013

In the Matter of Dura-Plex, Inc.
Docket Number TSCA-02-2013-9166

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Dura-Plex, Inc., bearing Docket Number TSCA-02-2013-9166. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

DATE: August 13, 2013

Helen Ferrara

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

In the Matter of Dura-Plex, Inc.
Docket Number TSCA-02-2013-9166

CERTIFICATE OF SERVICE

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

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region II
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Phil Loria
President
Dura-Plex, Inc.
1681 Route 88
Brick, New Jersey 08837

Dated: AUG 15 2013
New York, New York

Mildred H. Bae