

**** FILED ****
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U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:)
) Docket No. TSCA-09-2017-0002
Smithlum & Friend, Inc. dba)
Powerstar Home Energy Solutions,) CONSENT AGREEMENT
) AND FINAL ORDER
) PURSUANT TO 40 C.F.R.
) §§ 22.13 and 22.18
Respondent.)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Smithlum & Friend, Inc. dba Powerstar Home Energy Solutions ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action initiated against Respondent pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

2. Complainant is the Chief of the Waste and Chemical Section in the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

1 3. Respondent is a California corporation doing business at
2 3156 E. La Palma Avenue, Suite C in Anaheim, California.

3 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b),
5 40 C.F.R. Part 745, Subpart E requires a person who performs for
6 compensation a renovation of target housing and child-occupied
7 facilities to provide a lead hazard information pamphlet to the
8 owner and occupant before beginning the renovation.

9 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§
10 2682(a) and (c), 40 C.F.R. Part 745, Subpart E provides
11 requirements for certification of individuals and firms engaged
12 in lead-based paint activities and work practice standards for
13 renovation, repair, and painting activities in target housing and
14 child-occupied facilities.

15 6. "Target housing" means any housing constructed prior to
16 1978, except housing for the elderly or persons with disabilities
17 (unless any child who is less than six years of age resides or is
18 expected to reside in such housing) or any 0-bedroom dwelling.
19 Section 401 of TSCA, 15 U.S.C. § 2681.

20 7. "Person" means any natural or judicial person including
21 any individual, corporation, partnership, or association; any
22 Indian Tribe, State, or political subdivision thereof; any
23 interstate body; and any department, agency, or instrumentality
24 of the Federal Government. 40 C.F.R. § 745.83.

25 8. "Firm" means a company, partnership, corporation, sole
26 proprietorship, or individual doing business, association, or

1 other business entity; a Federal, State, Tribal, or local
2 government agency; or a nonprofit organization. 40 C.F.R. §
3 745.83.

4 9. "Renovation" means the modification of any existing
5 structure, or portion thereof, that results in the disturbance of
6 painted surfaces, unless that activity is part of an abatement as
7 defined by 40 C.F.R. § 745.223. The term "renovation" includes
8 (but is not limited to): the removal, modification or repair of
9 painted surfaces or painted components (e.g., modification of
10 painted doors, surface restoration, window repair, surface
11 preparation activity (such as sanding, scraping, or other such
12 activities that may generate paint dust); the removal of building
13 components (e.g., walls, ceilings, plumbing windows);
14 weatherization projects (e.g., cutting holes in painted surfaces
15 to install blown-in insulation or to gain access to attics
16 planning thresholds to install weatherstripping), and interim
17 controls that disturb painted surfaces...The term "renovation"
18 does not include minor repair and maintenance activities. 40
19 C.F.R. § 745.83.

20 10. "Painted surface" means a component surface covered in
21 whole or in part with paint or other surface coatings. 40 C.F.R.
22 § 745.83.

23 11. "Component or building component" means specific design
24 or structural elements or fixtures of a building or residential
25 dwelling that are distinguished from each other by form,
26 function, and location. These include, but are not limited to
27

1 interior components such as...windows and trim (including sashes,
2 window heads, jambs, sills or stools and troughs)...and exterior
3 components such as...windowsills or stools and troughs, casings,
4 sashes and wells. 40 C.F.R. § 745.83.

5 12. "Renovator" means any individual who either performs or
6 directs workers who perform renovations. A certified renovator
7 is a renovator who has successfully completed a renovator course
8 accredited by EPA or an EPA-authorized State or Tribal program.
9 40 C.F.R. § 745.83.

10 13. "Pamphlet" means the EPA pamphlet titled Renovate
11 Right: Important Lead Hazard Information for Families, Child Care
12 Providers and Schools developed under Section 406(a) of TSCA for
13 use in complying with Section 406(b) of TSCA, or any State or
14 Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326
15 that is developed for the same purpose. 40 C.F.R. § 745.83.

16 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the
17 Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R.
18 Part 19, which implements the Federal Civil Penalties Inflation
19 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize
20 civil penalties not to exceed \$37,500 per day for each violation
21 of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after
22 January 12, 2009 but before November 2, 2015.

23 C. ALLEGATIONS

24 15. Respondent is a "person," as that term is defined at 40
25 C.F.R. § 745.83.

26 16. At all times relevant to this CAFO, Respondent was a
27

1 "firm," as that term is defined at 40 C.F.R. § 745.83.

2 17. In or around February and March 2014, Respondent
3 performed "renovations," as that term is defined at 40 C.F.R. §
4 745.83, for compensation at residential properties located at 610
5 S. Valley Street and 4849 E. Wasatch Drive in Anaheim,
6 California, 4167 Maple Avenue in Chino, California, 613 Cardinal
7 Lane in Redlands, California and 701 Vallejo Street in Brea,
8 California.

9 18. At all times relevant to this CAFO, the residential
10 properties located at 610 S. Valley Street and 4849 E. Wasatch
11 Drive in Anaheim, California, 4167 Maple Avenue in Chino,
12 California, 613 Cardinal Lane in Redlands, California and 701
13 Vallejo Street in Brea, California were "target housing," as that
14 term is defined at 40 C.F.R. § 745.83.

15 19. Firms that perform renovations for compensation must
16 apply to EPA for certification to perform renovations. 40 C.F.R.
17 § 745.89(a).

18 20. On or after April 22, 2010, no firm may perform a
19 renovation without certification from EPA under 40 C.F.R. §
20 745.89(a) in target housing unless the renovation is performed in
21 target housing that has been determined to be lead-free pursuant
22 to 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(2)(ii).

23 21. At all times relevant to this CAFO, Respondent did not
24 have a certification from EPA to perform the renovations for
25 compensation at target housing located at 610 S. Valley Street
26 and 4849 E. Wasatch Drive in Anaheim, California, 4167 Maple
27

1 Avenue in Chino, California, 613 Cardinal Lane in Redlands,
2 California and 701 Vallejo Street in Brea, California.

3 22. At all times relevant to this CAFO, the target housing
4 located at 610 S. Valley Street and 4849 E. Wasatch Drive in
5 Anaheim, California, 4167 Maple Avenue in Chino, California, 613
6 Cardinal Lane in Redlands, California and 701 Vallejo Street in
7 Brea, California had not been determined to be lead-free pursuant
8 to 40 C.F.R. § 745.82(a) before the renovations for compensation
9 occurred.

10 23. Respondent's performance of renovations for
11 compensation at target housing located at 610 S. Valley Street
12 and 4849 E. Wasatch Drive in Anaheim, California, 4167 Maple
13 Avenue in Chino, California, 613 Cardinal Lane in Redlands,
14 California and 701 Vallejo Street in Brea, California without
15 certification from EPA under 40 C.F.R. § 745.89(a) constitutes a
16 violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of
17 TSCA, 15 U.S.C. § 2689.

18 24. No more than 60 days before beginning renovation
19 activities in any residential dwelling unit of target housing,
20 the firm performing the renovation must provide the owner of the
21 unit with the "pamphlet," as that term is defined at 40 C.F.R. §
22 748.83, and either obtain from the owner a written acknowledgment
23 that the owner has received the "pamphlet" or obtain a
24 certificate of mailing at least 7 days prior to the renovation.
25 40 C.F.R. § 745.84(a)(1).

26 25. Respondent did not provide the owners with the
27

1 "pamphlet" before beginning renovation activities at 610 S.
2 Valley Street and 4849 E. Wasatch Drive in Anaheim, California,
3 4167 Maple Avenue in Chino, California, 613 Cardinal Lane in
4 Redlands, California and 701 Vallejo Street in Brea, California.

5 26. Respondent's failures to provide the owners with the
6 "pamphlet" before beginning renovation activities at 610 S.
7 Valley Street and 4849 E. Wasatch Drive in Anaheim, California,
8 4167 Maple Avenue in Chino, California, 613 Cardinal Lane in
9 Redlands, California and 701 Vallejo Street in Brea, California
10 constitute five (5) violations of 40 C.F.R. § 745.84(a)(1) and
11 Section 409 of TSCA, 15 U.S.C. § 2689.

12 27. Firms performing renovations must retain documentation
13 of compliance with the requirements of § 745.85, including
14 documentation that a certified renovator provided on-the-job
15 training for workers used on the project; that the certified
16 renovator performed or directed workers who performed all of the
17 work practice tasks described in § 745.85(a); and that the
18 certified renovator performed the post-renovation cleaning
19 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

20 29. Respondent did not retain documentation that a
21 certified renovator provided on-the-job training for workers
22 used; that a certified renovator performed or directed workers
23 who performed all of the work practice tasks described in §
24 745.85(a); and that a certified renovator performed the post-
25 renovation cleaning verification described in § 745.85(b) for the
26 renovations performed at 610 S. Valley Street and 4849 E. Wasatch
27

1 Drive in Anaheim, California, 4167 Maple Avenue in Chino,
2 California, 613 Cardinal Lane in Redlands, California and 701
3 Vallejo Street in Brea, California.

4 30. Respondent's failures to retain documentation that a
5 certified renovator provided on-the-job training for workers
6 used; that a certified renovator performed or directed workers
7 who performed all of the work practice tasks described in §
8 745.85(a); and that a certified renovator performed the post-
9 renovation cleaning verification described in § 745.85(b) for the
10 renovations performed at 610 S. Valley Street and 4849 E. Wasatch
11 Drive in Anaheim, California, 4167 Maple Avenue in Chino,
12 California, 613 Cardinal Lane in Redlands, California and 701
13 Vallejo Street in Brea, California constitute fifteen (15)
14 violations of 40 C.F.R. § 745.86(b) (6) and Section 409 of TSCA,
15 15 U.S.C. § 2689.

16 31. Firms performing renovations must ensure that a
17 certified renovator is assigned to each renovation performed by
18 the firm and discharges all of the certified renovator
19 responsibilities identified in § 745.90. 40 C.F.R. §
20 745.89(d) (2) .

21 32. A certified renovator must prepare the records required
22 by § 745.86(b) (1) (ii) and (6). 40 C.F.R. § 745.90(b) (8) .

23 33. Respondent did not have a certified renovator that
24 prepared the records required by § 745.86(b) (6) for the
25 renovations performed at 610 S. Valley Street and 4849 E. Wasatch
26 Drive in Anaheim, California, 4167 Maple Avenue in Chino,
27

1 California, 613 Cardinal Lane in Redlands, California and 701
2 Vallejo Street in Brea, California.

3 34. Respondent did not ensure that a certified renovator
4 discharged all of the certified renovator responsibilities
5 identified in § 745.90 for the renovations performed at 610 S.
6 Valley Street and 4849 E. Wasatch Drive in Anaheim, California,
7 4167 Maple Avenue in Chino, California, 613 Cardinal Lane in
8 Redlands, California and 701 Vallejo Street in Brea, California.

9 35. Respondent's failures to ensure that a certified
10 renovator discharged all of the certified renovator
11 responsibilities identified in § 745.90 for the renovations
12 performed at 610 S. Valley Street and 4849 E. Wasatch Drive in
13 Anaheim, California, 4167 Maple Avenue in Chino, California, 613
14 Cardinal Lane in Redlands, California and 701 Vallejo Street in
15 Brea, California constitute five (5) violations of 40 C.F.R. §
16 745.89(d) (2) and Section 409 of TSCA, 15 U.S.C. § 2689.

17 D. RESPONDENT'S ADMISSIONS

18 36. In accordance with 40 C.F.R. § 22.18(b) (2) and for the
19 purpose of this proceeding, Respondent (i) admits that EPA has
20 jurisdiction over the subject matter of this CAFO and over
21 Respondent; (ii) neither admits nor denies the specific factual
22 allegations contained in Section I.C of this CAFO; (iii) consents
23 to any and all conditions specified in this CAFO and to the
24 assessment of the civil administrative penalty under Section I.E
25 of this CAFO; (iv) waives any right to contest the allegations
26 contained in Section I.C of this CAFO; and (v) waives the right

1 to appeal the proposed final order contained in this CAFO.

2 E. SUPPLEMENTAL ENVIRONMENTAL PROJECT

3 37. Within four (4) months after the effective date of this
4 CAFO, Respondent shall perform the following supplemental
5 environmental project ("SEP"): Respondent shall donate a minimum
6 of ten (10) LeadCare II blood lead analyzers and one box of
7 LeadCare II test kits per analyzer to not-for-profit community
8 health clinics listed with the California Primary Care
9 Association that are located in San Bernardino or Orange Counties
10 in California and approved by EPA pursuant to Paragraph 39 of
11 this CAFO. Respondent shall donate one analyzer and one box of
12 test strips per clinic unless EPA approves donation of more than
13 one analyzer to a clinic pursuant to Paragraph 39.

14 38. Each clinic that accepts the donation must satisfy the
15 requirements identified in "An Overview of Requirements for Point
16 of Service Blood Lead Testing Devices in California" published by
17 the California Department of Public Health.

18 39. Prior to donation, Respondent shall provide to EPA a
19 written notice of the clinics selected for donation for EPA
20 review and approval. Identification of any clinic that will
21 receive more than one analyzer and justification of the clinic's
22 need for more than one analyzer must be included in the notice
23 for approval.

24 40. Upon Respondent's written request, EPA may grant, in
25 writing, additional time to complete the donation of analyzers
26 and test strips if Respondent can demonstrate that, despite its
27

1 best efforts, it could not complete the donations within the
2 given four (4) month period.

3 41. In performing this SEP, Respondent shall spend a
4 minimum of THIRTY-FOUR THOUSAND, TWO HUNDRED AND EIGHTY-EIGHT
5 DOLLARS (\$34,288). If Respondent meets the minimum number of
6 analyzers and test strips to be donated pursuant to Paragraph 37
7 without spending the minimum amount set forth in this paragraph,
8 Respondent shall donate additional analyzers and test strips,
9 consistent with the terms and conditions of this CAFO, until the
10 minimum amount has been spent.

11 42. Within six (6) months of the effective date of this
12 CAFO, Respondent shall submit to EPA a Final Report that
13 includes:

- 14 a. the exact type of analyzer and test strips
15 purchased;
- 16 b. the date(s) of purchase;
- 17 c. the date(s) of donation; and
- 18 d. proof of payment for all purchases made pursuant
19 to the SEP.

20 43. In performing this SEP, Respondent certifies that:

- 21 a. all cost information that Respondent provides to
22 EPA in connection with the SEP is complete and
23 accurate and, in good faith, Respondent estimates
24 that the cost to implement the SEP is a minimum of
25 THIRTY-FOUR THOUSAND, TWO HUNDRED AND EIGHTY-EIGHT
26 DOLLARS (\$34,288);

- 1 b. as of the date of execution of this CAFO,
2 Respondent is not required to perform the SEP by
3 any federal, state, or local law or by agreement
4 or grant or as injunctive relief in any other
5 action in any forum;
- 6 c. the SEP is not a project that Respondent was
7 planning or intending to perform other than in
8 settlement of the claims alleged in this CAFO;
- 9 d. Respondent has not and will not receive credit for
10 the SEP in any other enforcement action;
- 11 e. neither Respondent nor the recipient clinics will
12 receive reimbursement from another person or
13 entity for any portion of the SEP; and
- 14 f. for federal income tax purposes, Respondent will
15 not deduct any cost or expenditure incurred in
16 performing the SEP.

17 44. Respondent shall maintain legible copies of all
18 documentation relevant to the SEP and report submitted to EPA
19 pursuant to this CAFO for a minimum of one (1) year from
20 performance of the SEP and shall provide such documentation to
21 EPA not more than seven (7) days after an EPA request for such
22 information.

23 45. The SEP shall be deemed to be "satisfactorily
24 performed" when Respondent has made the donation described in
25 Paragraph 37, expended the minimum amount identified in Paragraph
26 41, and submitted the Final Report to EPA described in Paragraph
27

1 42. If Respondent is not granted an extension of time pursuant
2 to Paragraph 40 and fails to complete the donation within the
3 deadline set forth in Paragraph 37 and expend the minimum amount
4 set forth in Paragraph 41, Respondent must pay a stipulated
5 penalty of the difference between \$34,288 and the amount that
6 Respondent actually spent in accordance with this CAFO, plus an
7 additional 10% of the remaining balance. If Respondent fails to
8 submit to EPA the Final Report by the deadline set forth in
9 Paragraph 42, upon EPA's written request, Respondent must pay a
10 stipulated penalty of \$150 for each day that the report is
11 delinquent until Respondent submits the report.

12 46. Any submittal to EPA required under Section I.E of this
13 CAFO shall be sent by certified mail, return receipt requested
14 to:

15 Max Weintraub
16 Waste & Chemical Section (ENF-2-2)
17 Enforcement Division
18 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

19 47. Any public statement, written or oral, in print, film,
20 or other media, that Respondent or Respondent's representative
21 makes in reference to the SEP must include the following
22 language: "This project was undertaken in connection with the
23 settlement of an enforcement action that the U.S. Environmental
24 Protection Agency brought for alleged violations of the Toxic
25 Substances Control Act and federal lead-based paint regulations
26 at 40 C.F.R. Part 745, Subpart E."

27 48. All submittals required by this CAFO that purport to

1 document compliance with the terms of this CAFO shall contain the
2 following certification language signed by a responsible official
3 of Respondent:

4 I certify under penalty of law that the information
5 contained in or accompanying this document is true,
6 accurate, and complete. As to the identified portion[s]
7 of this document for which I cannot personally verify
8 [its/their] truth and accuracy, I certify that, based
9 on my inquiry of the person or persons directly
10 responsible for gathering the information, the
11 information is true, accurate, and complete.

12 F. CIVIL ADMINISTRATIVE PENALTY

13 49. Respondent agrees to the assessment of a penalty in the
14 amount of ELEVEN THOUSAND, FOUR HUNDRED AND TWENTY-NINE DOLLARS
15 (\$11,429) as final settlement of the civil claims against
16 Respondent arising under TSCA as alleged in Section I.C of this
17 CAFO.

18 50. Respondent shall pay the assessed penalty no later than
19 thirty (30) days after the effective date of the CAFO.

20 The assessed penalty shall be paid by **certified or cashier's**
21 **check**, payable to "Treasurer, United States of America," or paid
22 by one of the other methods listed below and sent as follows:

23 Regular Mail:

24 U.S. Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077
28 St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank
in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

1 SWIFT address = FRNYUS33
33 Liberty Street
2 New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
3 Environmental Protection Agency"

4 Overnight Mail:

5 U.S. Bank
1005 Convention Plaza
6 Mail Station SL-MO-C2GL
ATTN Box 979077
7 St. Louis, MO 63101

8 ACH (also known as REX or remittance express):

9 US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
10 Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
11 Physical location of US Treasury Facility
57000 Rivertech Court
12 Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

13 On Line Payment:

14 This payment option can be accessed from the information below:

15 www.pay.gov
16 Enter "sf01.1" in the search field
Open form and complete required fields

17 If clarification regarding a particular method of payment
18 remittance is needed, contact the EPA Cincinnati Finance Center
at 513-487-2091.

19 Concurrently, a copy of the check or notification that the
20 payment has been made by one of the other methods listed above,
21 including proof of the date payment was made, shall be sent with
22 a transmittal letter indicating Respondent's name, the case
23 title, and the docket number to:

24 a) Regional Hearing Clerk (ORC-1)
25 Office of Regional Counsel
26 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
27 San Francisco, California 94105

1
2 b) Max Weintraub
3 Waste & Chemical Section (ENF-2-2)
4 Enforcement Division
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 51. Payment of the above civil administrative penalty shall
9 not be used by Respondent or any other person as a tax deduction
10 from Respondent's federal, state, or local taxes.
11

12 52. If Respondent fails to pay the assessed civil
13 administrative penalty specified in Paragraph 49 by the deadline
14 specified in Paragraph 50, then Respondent shall pay to EPA a
15 stipulated penalty of \$500 per day in addition to the assessed
16 penalty. Stipulated penalties shall accrue until such time as
17 the assessed penalty and all accrued stipulated penalties are
18 paid and shall become due and payable upon written request by
19 EPA. In addition, failure to pay the civil administrative
20 penalty by the deadline specified in Paragraph 50 may lead to any
21 or all of the following actions:

22 a. The debt being referred to a credit reporting
23 agency, a collection agency, or to the Department
24 of Justice for filing of a collection action in
25 the appropriate United States District Court. 40
26 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
27 collection action, the validity, amount, and
28 appropriateness of the assessed penalty and of
this CAFO shall not be subject to review.

b. The debt being collected by administrative offset

1 (i.e., the withholding of money payable by the
2 United States to, or held by the United States
3 for, a person to satisfy the debt the person owes
4 the Government), which includes, but is not
5 limited to, referral to the Internal Revenue
6 Service for offset against income tax refunds. 40
7 C.F.R. Part 13, Subparts C and H.

8 c. EPA may (i) suspend or revoke Respondent's
9 licenses or other privileges; or (ii) suspend or
10 disqualify Respondent from doing business with EPA
11 or engaging in programs EPA sponsors or funds. 40
12 C.F.R. § 13.17.

13 d. In accordance with the Debt Collection Act of 1982
14 and 40 C.F.R. Part 13 interest, penalties charges,
15 and administrative costs will be assessed against
16 the outstanding amount that Respondent owes to EPA
17 for Respondent's failure to pay the civil
18 administrative penalty by the deadline specified
19 in Paragraph 50. Interest will be assessed at an
20 annual rate that is equal to the rate of current
21 value of funds to the United States Treasury
22 (i.e., the Treasury tax and loan account rate) as
23 prescribed and published by the Secretary of the
24 Treasury in the Federal Register and the Treasury
25 Fiscal Requirements Manual Bulletins. 40 C.F.R.
26 § 13.11(a)(1). Penalty charges will be assessed
27 monthly at a rate of 6% per annum. 40 C.F.R.

1 § 13.11(c). Administrative costs for handling and
2 collecting Respondent's overdue debt will be based
3 on either actual or average cost incurred, and
4 will include both direct and indirect costs. 40
5 C.F.R. § 13.11(b). In addition, if this matter is
6 referred to another department or agency (e.g.,
7 the Department of Justice, the Internal Revenue
8 Service), that department or agency may assess its
9 own administrative costs, in addition to EPA's
10 administrative costs, for handling and collecting
11 Respondent's overdue debt.

12 G. RESPONDENT'S CERTIFICATION

13 53. In executing this CAFO, Respondent certifies that it
14 is now in compliance with the federal regulations promulgated at
15 40 C.F.R. Part 745, Subpart E.

16 H. RETENTION OF RIGHTS

17 54. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
18 resolves Respondent's liability for federal civil penalties for
19 the violations and facts specifically alleged in Section I.C of
20 this CAFO. Nothing in this CAFO is intended to or shall be
21 construed to resolve (i) any civil liability for violations of
22 any provision of any federal, state, or local law, statute,
23 regulation, rule, ordinance, or permit not specifically alleged
24 in Section I.C of this CAFO; or (ii) any criminal liability. EPA
25 specifically reserves any and all authorities, rights, and
26 remedies available to it (including, but not limited to,
27 injunctive or other equitable relief or criminal sanctions) to

1 address any violation of this CAFO or any violation not
2 specifically alleged in Section I.C of this CAFO.

3 55. This CAFO does not exempt, relieve, modify, or affect
4 in any way Respondent's duty to comply with all applicable
5 federal, state, and local laws, regulations, rules, ordinances,
6 and permits.

7 I. ATTORNEYS' FEES AND COSTS

8 56. Each party shall bear its own attorneys' fees, costs,
9 and disbursements incurred in this proceeding.

10 J. EFFECTIVE DATE

11 57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
12 22.31(b), this CAFO shall be effective on the date that the final
13 order contained in this CAFO, having been approved and issued by
14 either the Regional Judicial Officer or Regional Administrator,
15 is filed.

16 K. BINDING EFFECT

17 58. The undersigned representative of Complainant and the
18 undersigned representative of Respondent each certifies that he
19 or she is fully authorized to enter into the terms and conditions
20 of this CAFO and to bind the party he or she represents to this
21 CAFO.

22 59. The provisions of this CAFO shall apply to and be
23 binding upon Respondent and its officers, directors, employees,
24 agents, trustees, servants, authorized representatives,
25 successors, and assigns.

26 ///

1 FOR RESPONDENT, SMITHLUM & FRIEND, INC. DBA POWERSTAR HOME ENERGY
2 SOLUTIONS

3 11-3-2016

4 DATE



Richard A. Kovach
Production Manager
Powerstar Home Energy Solutions

6
7 FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

8 12/7/16

9 DATE



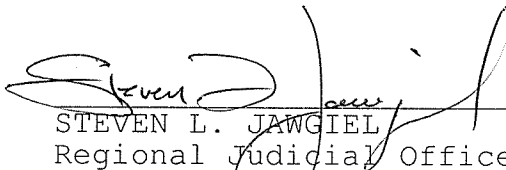
Douglas K. McDaniel
Chief, Waste & Chemical Section
Enforcement Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX

1
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-
6 2017-~~0002~~, be entered, and that Respondent shall pay a civil
7 administrative penalty in the amount of ELEVEN THOUSAND, FOUR
8 HUNDRED AND TWENTY-NINE DOLLARS (\$11,429) and comply with the
9 terms and conditions set forth in the Consent Agreement. This
10 Consent Agreement and Final Order shall become effective upon
11 filing.

12 12/12/16
13 DATE

14 
15 STEVEN L. JAWGIEL
16 Regional Judicial Officer
17 U.S. Environmental Protection
18 Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order has been filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

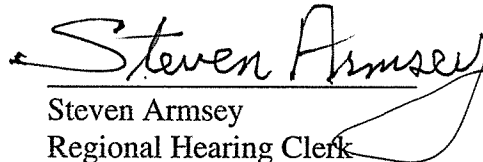
Richard A. Kovach
Production Manager
Powerstar Home Energy Solutions
2921 Daimler Street
Santa Ana, CA 92705

Certified Mail # 7016 1370 0000 2235 0896

and Hand-Delivered to:

Carol Bussey
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Date: Dec. 13, 2016


Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX