



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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2016 JAN 20 AM 11:25

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: TSCA-08-2016-0001

IN THE MATTER OF:

THD AT-HOME SERVICES, INC.
2455 Paces Ferry Road
Atlanta, Georgia

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 20th DAY OF January, 2016.

Thomas Rucki
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. TSCA-08-2016-0001

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HEARING CLERK

IN THE MATTER OF:)

THD At-Home Services, Inc.)
2455 Paces Ferry Road)
Atlanta, Georgia 30339,)

Respondent.)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, THD At-Home Services, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

AUTHORITY

1. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. Part 745.

RESPONDENT

3. Respondent is a corporation organized under the laws of the State of Delaware and authorized to do business in Colorado.
4. Respondent is a "person" for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
5. Respondent is a "firm" as defined by 40 C.F.R. § 745.83.

ALLEGED VIOLATIONS

6. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. Part 745, Subpart E.

7. The RRP Rule requires that all renovations performed for compensation in target housing comply with work practice standards at 40 C.F.R. § 745.85.
8. Failure to comply with any provision of the RRP Rule, 40 C.F.R. Part 745, Subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. Section 16 of TSCA, 15 U.S.C. § 2615, as modified by 40 C.F.R. Part 19, authorizes the EPA to assess a civil penalty of up to \$37,500 for each violation of section 409.
9. On May 1, 2015, Respondent entered into a contract with a homeowner for work to be performed on the exterior of a residential property at 14500 W. 82nd Ave, Arvada, Colorado (the Jobsite).
10. The residential property was built before 1978 and is therefore “target housing” as defined at section 401 of TSCA, 15 U.S.C. § 2681.
11. Respondent performed a test for lead-based paint on the front fascia of the Jobsite and determined lead-based paint was present.
12. Respondent issued a work order to L & S Construction, Inc. to remove and replace the painted fascia and soffit at the Jobsite.
13. The removal of the fascia and soffit at the Jobsite by Respondent’s subcontractor was a “renovation,” as that term is defined at 40 C.F.R. § 745.83.
14. L & S Construction, Inc. commenced work at the Jobsite on June 22, 2015.
15. On June 22, 2015, the homeowner contacted Respondent to report that L & S Construction, Inc. was not following lead-safe practices during the renovation.
16. On June 22, 2015, a representative of the EPA performed an inspection of the Jobsite for compliance with the RRP Rule, 40 C.F.R. Part 745, Subpart E.
17. At the time of the inspection, L & S Construction, Inc. had completed its work at the Jobsite and employees were loading their things into their truck.
18. The RRP Rule requires that waste from any renovation be contained to prevent releases of dust and debris before the waste is removed from the work area, pursuant to 40 C.F.R. § 745.85(a)(4)(i).
19. At the time of the inspection, the EPA observed that waste from the renovation was not contained and was being stored in an open-ended box in the work area.
20. Based on the inspection and information available to the EPA, EPA concludes that Respondent, as the general contractor, failed to ensure that during the renovation at the Jobsite, waste from the fascia and soffit removal was contained to prevent releases of dust and debris before waste was removed from the work area, in violation of 40 C.F.R. § 745.85(a)(4)(i).
21. The RRP Rule also requires that the work area be cleaned until no dust, debris or residue remains, pursuant to 40 C.F.R. § 745.85(a)(5).
22. At the time of the inspection, the EPA observed dust, debris, and residue on the ground and the

exterior window sills throughout the work area.

23. Based on the inspection and the information available to the EPA, EPA concludes that Respondent, as the general contractor, failed to ensure that the work area was cleaned until no dust, debris or residue remained, in violation of 40 C.F.R. § 745.85(a)(5).
24. The EPA concludes that the failure to ensure waste from renovations was contained and the work area was cleaned in accordance with the RRP Rule constitute violations of section 409 of TSCA, 15 U.S.C. § 2689.

SETTLEMENT

25. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
26. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with 15 U.S.C. § 2615.
27. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. Part 745 Subpart E, at the time the work described herein was being conducted by its subcontractor; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
28. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of thirty seven thousand and sixty-five dollars (\$37,065) is appropriate to settle this matter.
29. Respondent consents and agrees to pay a civil penalty in the amount of thirty seven thousand and sixty five dollars (\$37,065) in the manner described below.
30. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
31. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any commercial carrier or signed receipt confirmation:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If sent by wire transfer: Wire transfers must indicate the name and docket number of this case and 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 Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: U.S. Environmental Protection Agency

Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

U.S. Treasury Contact Information:
REX (Remittance Express): 866-234-5681

Online debit and credit card payment:

www.Pay.gov
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

32. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek
U.S. EPA Region 8 (8ENF-AT)
Technical Enforcement Program
1595 Wynkoop St.
Denver, Colorado 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

33. In the event payment is not received by the specified due date, interest accrues from thirty (30) days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
34. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31st) day from the due date of any payment, and for each subsequent thirty (30) day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
35. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

GENERAL PROVISIONS

36. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
37. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
38. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both parties, shall fully and finally resolve Respondent's liability only for Federal civil penalties for the violations and facts alleged in this Consent Agreement.
39. Respondent waives any and all available rights to judicial or administrative review or other remedies which Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
40. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to, the following:
 - a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this


Agreement;

- b. Claims based on criminal liability; and,
 - c. Claims based on any other violations of the Act or federal or state law.
41. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
 42. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
 43. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
 44. Each party to this action shall bear its own costs and attorney fees, if any.
 45. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
 46. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which it is filed with the Regional Hearing Clerk.


FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,

Complainant

Date: 1/8/16

By: 
David Cobb, Acting Supervisor
Toxics Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-AT)
U.S. Environmental Protection Agency,
Region 8

Date: 1/13/16

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-L)
U.S. Environmental Protection Agency,
Region 8

FOR THD At-Home Services, Inc.,

Respondent

Date: DEC 08 2015

By: 

Printed Name: Aaron Carmack

Title: UP Home Services

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT and FINAL ORDER** in the matter of **THD AT-HOME SERVICES, INC; DOCKET NO.: TSCA-08-2016-0001** was filed with the Regional Hearing Clerk on January 20, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt and emailed on December 3, 2015 to:

Respondents Attorney:

John Jacus
Davis, Graham & Stubbs, LLP
1550 17th Street, Suite 500
Denver, Colorado 80202
John.jacus@dgsllaw.com

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

January 20, 2016



Tina Artemis
Paralegal/Regional Hearing Clerk

