



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 23 2019

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RECEIVED
OFFICE OF REGIONAL COUNSEL

CERTIFIED MAIL –
RETUEN RECEIPT REQUESTED
Article Number: 7018 2290 0000 4960 8437

Kevin Tierney, Partner
Berenson LLP
4495 Military Trail, Suite 203
Jupiter, Florida 33458

RE: In the Matter of Panther Siding & Windows, Inc.
Docket Number TSCA-02-2019-9267

Dear Mr. Tierney:

Enclosed is a copy of the Consent Agreement and Final Order (“CA/FO”) in the above-reference proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency (“EPA”), Region 2. Also enclosed are the compliance plan, which your client already signed and the renovation checklist, which your client also reviewed and approved. The original CA/FO will be filed with the Regional Hearing Clerk of EPA, Region 2.

Please note that payment is due within thirty (30) days of the signature by the Regional Administrator. The CA/FO also requires that the compliance plan (attachment 1 of the CA/FO) and checklist (attachment 2 of the CA/FO) be implemented at every renovation that is regulated by the lead paint regulations and that Panther Siding & Windows, Inc (“Panther”) (or its contractor(s)/subcontractor(s)) performs. The CA/FO further requires that Panther submits quarterly reports to EPA for a period of one year from the date of signature of the Final Order.

Thank you for your cooperation in working with EPA to resolve this matter. Feel free to call me at (212) 637-3220 if you have any questions regarding this matter.

Sincerely,

Rudolph Perez
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2019 MAR 24 AM 7:06

-----X
In the Matter of :
Panther Siding & Windows, Inc. :
Respondent :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2019-9267

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 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 pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and

22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Panther Siding & Windows, Inc (“Respondent”).
2. Respondent’s primary place of business is located at 1786 Newbridge Road, North Bellmore, New York 11710.
3. Respondent is engaged in the business of residential construction, including window replacement, roofing, and siding work.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83, with EPA Firm Certification No. NAT-50726-2, valid from June 1, 2015 through June 9, 2020.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and set forth at 40 C.F.R. Part 745, specifically the requirements on Residential Property Renovation at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (“RRP”)) Rule.
6. It is unlawful under Section 409 of TSCA, 15 U.S.C. § 2689, for a firm conducting renovations in Target Housing subject to the requirements of 40 C.F.R. Part 745 to violate any requirement of the RRP Rule.
7. The RRP Rule was promulgated to ensure that renovation activities in target housing¹ are, at a minimum, conducted by properly trained individuals and in a safe and proper manner to minimize lead exposure to the public, housing occupants and the environment.

¹ “Target Housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 USC Section 2681(17) and 40 C.F.R. Section 745.223.

8. The RRP Rule requires that firms conduct renovations (as defined in 40 C.F.R. § 745.83) in target housing in accordance with the work practice standards therein, unless (1) the firm has first made or obtained a determination in writing that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to, or in excess of, 1.0 milligrams/per square centimeter (mg/cm²) or 0.5% by weight as described at 40 C.F.R. Section 745.82, or (2) the renovation is, itself, a minor repair and maintenance activity as defined at 40 C.F.R. § 745.83.

9. On or about June 7, 2017, duly authorized inspectors of EPA performed an inspection (the "Inspection" or "EPA's Inspection") of the Respondent's offices at 1786 Newbridge Road, North Bellmore, New York 11710 to determine the company's compliance with the federal lead-based paint regulations. There were no customer files for review by EPA during the inspection.

10. During the month of June 2017, an EPA inspector followed up via telephone and e-mails to Respondent and requested a list of subcontractors used by Respondent and a list of properties where renovations had been performed from June 1, 2015 to June 1, 2017

11. On July 3, 2017, Kevin Tierney, Esq. sent an e-mail to the EPA Inspector stating that he was representing Respondent and he had advised Respondent to comply with EPA's request.

12. On July 10, 2017, Mr. Tierney sent via e-mail to the EPA Inspector a list of subcontractors used by Respondent and spreadsheets containing addresses and dates of renovations performed by Respondent and its subcontractors.

13. On July 28, 2017, EPA sent an Information Request Letter ("IRL") to Respondent requesting copies of 17 contracts randomly selected from the information Mr. Tierney had sent to EPA. On August 30, 2017, Mr. Tierney, on behalf of Respondent, submitted a response to EPA's July 28, 2017 IRL. Thereafter, the EPA Inspector requested via e-mail certain clarification of the information submitted to EPA and Mr. Tierney provided the clarification requested.

14. Based on the EPA Inspection and the information later obtained via the IRL and e-mails, EPA alleges that Respondent violated the RRP Rule in the course of renovations conducted in target housing at the following addresses: 2764 Martin Avenue, Bellmore, NY; 3071 Clubhouse Road, Merrick, NY; 16 Slate Lane, Levittown, NY; 106 W. Maple Drive, New Hyde Park, NY; 27 Penn Street, Farmingdale, NY; 5 Teresa Place, Hempstead, NY; 1234 Taft Avenue, Merrick, NY; 83-15 169 Street, Queens, NY; 251-05 82nd Avenue, Queens, NY; 132-28 89th Street, Queens, NY; 26 Helene Avenue, Merrick, NY and 15 Hastings Drive, Merrick, NY.

15. EPA further alleges as follows:

a. At each of the above-listed addresses, Respondent failed to provide the owner of each unit with the lead-hazard information pamphlet as required by 40 C.F.R. Part 745.84(a)(1);

b. Respondent failed to establish and maintain records of compliance for the renovations conducted at each of the above-listed addresses, as required by 40 C.F.R. Part 745.87(b); and

c. Respondent failed to assign a certified renovator to the renovations conducted at each of the above-listed addresses, as required by 40 C.F.R. § 745.89(d)(2).

16. Each of Respondent's alleged failures to comply with the RRP Rule constitute independent violations of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be separately assessed under TSCA §16(a), 15 U.S.C. § 2615(a).

17. On July 5, 2018, EPA sent Respondent a letter setting out the alleged violations and extending an offer to meet. EPA and the Respondent held informal pre-filing settlement conferences, as a result of which the parties agreed to enter into this Consent Agreement.

18. On October 18, 2018, Respondent submitted financial information and documentation to EPA regarding Respondent's financial condition with respect to its ability to pay a penalty in settlement of this matter.

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 maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

2. Respondent certifies that, as of the date of execution of this CA/FO, it is in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692 and the implementing regulations codified at 40 C.F.R. Part 745.

3. Respondent further certifies, under penalty of law, that:

The financial information and documentation it submitted to EPA on October 18, 2018, regarding Respondent's financial condition is accurate, complete, and not misleading. Respondent certifies that the copy of Schedule L submitted for EPA's consideration is a true and accurate copy of Respondent's Schedule L submitted as part of Respondent's 2017 tax return filed with the Federal Internal Revenue Service. Respondent understands that EPA has relied on the accuracy of this financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Respondent understands that EPA retains the authority to seek and obtain appropriate relief if EPA obtains evidence that the information or documentation provided and/or representations made to EPA regarding Respondent's finances is false or, in any material respect, inaccurate.

4. 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 "Findings of Fact and Conclusions of Law" section, above; and (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

5. Respondent shall pay, either by cashier's or certified check or electronically by Fedwire, a civil penalty in the amount of **FOURTEEN THOUSAND SEVEN HUNDRED FIFTY-THREE**

DOLLARS (\$14,753) due on or before 30 calendar days from the date of signature of the Final Order at the end of this document.

a. If payment is made by check, then such check shall be made payable to “Treasurer of the United States of America” and shall be mailed by one of the following two methods:

STANDARD DELIVERY

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O Box 979077
St. Louis, MO 63197-9000

or

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check shall be identified with the case name and docket number: *In the Matter of Panther Siding & Windows, Inc.*, Docket No. TSCA-02-2019-9267.

b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when the payment is made:

- 1) Amount of Payment;
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004;**
- 5) Field Tag 4200 of the Fedwire message should read: **D68010727**
Environmental Protection Agency;
- 6) Name of Respondent: **Panther Siding & Windows, Inc.;** and
- 7) Case Docket Number **TSCA-02-2019-9267.**

6. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

7. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

8. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

9. Respondent has developed a Compliance Plan addressing the following broad categories of compliance with TSCA and the RRP regulations codified at 40 C.F.R. Part 745:

- a. Maintaining & Renewing EPA RRP Firm certification(s);
- b. Obtaining, Maintaining & Renewing RRP certifications for individual renovators, which are issued by EPA-accredited training providers as a course completion certificate upon completion of the course;
- c. Training of Respondent employees who perform RRP work. Such training shall include lead-safe work practices of 40 C.F.R. Part 745.85(a), and how to fill the Forms and checklist included in the RRP Compliance Packet, which is attached to the Compliance Plan and incorporated by reference into this CA/FO, for each job performed by Respondent;
- d. Creation and retention of records of compliance;
- e. Compliance with lead-safe work practice standards for renovation projects;

- f. Compliance with post-renovation cleaning verification requirements; and
- g. Management of general contractor/subcontractor roles for RRP Rule projects.

Respondent has also assembled an “RRP Compliance Packet” which consists of Forms and checklists which will be used in conjunction with each renovation job in order to ensure proper Lead Safe Work Practices and recordkeeping. EPA has approved of the Compliance Plan, appended to this CA/FO as Attachment 1 and the RRP Compliance Packet as Attachment 2, and both are incorporated herein.

10. Respondent shall implement the Compliance Plan, including use of the RRP Compliance Packet, at all target housing and child-occupied facilities at which Respondent performs renovations subject to the provisions of 40 C.F.R. Part 745. Implementation of the Compliance Plan and use of the RRP Compliance Packet is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to compliance therewith. Adherence to the provisions of the Compliance Plan and use of the RRP Compliance Packet and compliance with the provisions of this Consent Agreement with regard to the implementation of the Compliance Plan and use of the RRP Compliance Packet shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745 nor a defense to the failure to do so.

11. Respondent shall submit reports to EPA documenting its implementation of the Compliance Plan and use of the RRP Compliance Packet (hereinafter “CP Reports”) in accordance with the following terms:

a. Respondent shall prepare quarterly CP Reports to EPA for a period of one year commencing ninety (90) days from the date of signature of the Final Order. Each quarterly CP Report shall be submitted by Respondent and received by EPA no later than 15 days from the end of the preceding quarter.

b. Each report shall summarize RRP activities performed and state the number of RRP renovations undertaken during the preceding quarter. The Report shall also include the following:

(1) The complete address of any renovation job conducted or underway at the time of the report and the areas renovated or to be renovated (e.g., apartment number(s) common area, exterior);

(2) The type of the renovation (e.g., residential home, multi-family apartment building, school building, conversion to housing);

(3) The specific renovation work performed;

(4) The Construction year of the building(s);

(5) If a multi-family building, provide the number of floors and number of apartments per floor;

(6) Whether the Renovation Site was/will be occupied at the time of the renovation;

(7) The name, address and telephone number of the individual who was/will be the on-site certified renovator for the work and include a copy of his/her RRP training certificate;

(8) The name, address and telephone number of each subcontractor specifying the type of work each subcontractor performed or will perform at each renovation.

(9) The name, address, and telephone number of the building owner; and

(10) The scheduled dates of work, including start date and projected finish date.

c. In the event that no work subject to the provisions of 40 C.F.R. Part 745 is undertaken in a given quarter, Respondent shall so state in the CP Report for that quarter.

d. The CP Reports shall be sent to the following addresses:

Demian Ellis
U.S. EPA – Region 2
Lead-Based Paint Team
2890 Woodbridge Road – MS-225
Edison, New Jersey 08837

ellis.demian@epa.gov

A copy of the cover page or transmittal e-mail only shall be sent to:

Rudolph Perez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA – Region 2
290 Broadway – 16th Floor
New York, N.Y. 10007-1866

perez.rudolph@epa.gov

e. Each CP Report shall contain the following certification signed by an appropriate corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.

12. Respondent shall be subject to stipulated penalties for the failure to (1) provide the required substantive content in the CP Report or (2) submit the required CP Reports in a timely manner as follows:

- a. 1 – 30 days delinquent --\$500 per day
- b. 30 – 60 days delinquent - \$750 per day
- c. Each day past 61 days: \$1,000 per day

All Stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of the stipulated penalties shall be made in the same manner as prescribed in Paragraph 5 of the Consent Agreement Section above, for payment of the civil penalty. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment but need only be paid upon demand.

13. Following receipt of the CP Report EPA will either:

- a. accept the CP Report(s); or
- b. reject the CP Report(s) and notify Respondent, in writing, of deficiencies in the CP Report, granting Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the CP Report to EPA. If the identified deficiency(ies) in the CP Report is/are the result of a failure of substantive compliance, then EPA will provide Respondent with an opportunity to respond and/or correct the deficiencies. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 12 above.

14. If in the future EPA believes that any of the information in the documentation or CP Reports certified to, pursuant to paragraph 11(e), above, is inaccurate, EPA will advise Respondent of its belief and its basis for such and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certification(s) is (are) mostly inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 12, above for non-compliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq. or any other applicable law.

15. EPA Region 2's Director of Division of Enforcement & Compliance Assistance, may, in her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's written submission, EPA determines that Respondent failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.

16. Delays:

a. If any unforeseen event occurs which causes or may cause delays in the submission of the CP Report(s) as required herein, Respondent shall notify EPA in writing within (14) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for the submission of the CPE Reports caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such event.

b. If the parties agree that the delay or anticipated delay in the submission of the CP Report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period of no longer than the Delay resulting from such circumstances.

c. In the event that EPA does not agree that a delay in submitting the CP Report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent.

17. Any responses, documentation, and communication (other than the CP) submitted in connection with this Consent Agreement shall be sent to:

Demian Ellis
Enforcement Officer
Pesticides and Toxic Substances Branch – Lead Team
Division of Enforcement and Compliance Assistance

U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837

And copy of the cover page only or transmittal e-mail to:

Rudolph Perez, Esquire
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following address:

Dennis Kutner, President
Panther Siding and Windows, Inc.
1786 Newbridge Road
North Bellmore, New York 11710

18. Full payment of the penalty described in paragraph 5 of the Consent Agreement section, above, shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 14 through 16 in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case 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.

19. Nothing in this document is intended nor shall be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

20. The civil penalty and any stipulated penalty provided for herein are “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.

21. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

22. Respondent consents to the issuance of the accompanying Final Order.

23. Respondent agrees that all terms of settlement are set forth herein.

24. 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.

25. Respondent hereby waives any rights it may have to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on the Findings of Fact and Conclusions of Law herein or to seek review of this Consent Agreement and the accompanying Final Order.

26. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this Consent Agreement and Final Order.

27. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect

Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.


28. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

29. Each party hereto agrees to bear its own costs and fees in this matter.

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

In the Matter of Panther Siding & Windows, Inc.
Docket Number TSCA-02-2019-9267

Panther Siding & Windows, Inc.

RESPONDENT: BY: 
(SIGNATURE)
NAME: Dennis Kutner
(PLEASE PRINT)
TITLE: President
DATE: 4/10/19

In the Matter of Panther Siding & Windows, Inc.
Docket Number TSCA-02-2019-9267

COMPLAINANT:

A handwritten signature in blue ink, appearing to read "Dore LaPosta", is written over a horizontal line. The signature is fluid and cursive.

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

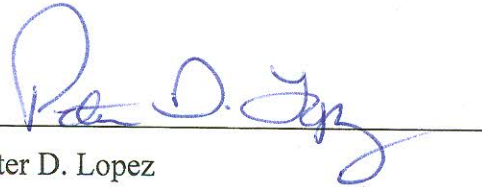
APR 12 2019

DATE: _____

In the Matter of Panther Siding & Windows, Inc.
Docket Number TSCA-02-2019-9267

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Panther Siding & Windows, Inc. Docket Number TSCA-02-2019-9267. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. 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. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk of EPA - Region 2 (40 C.F.R. § 22.31(b)).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency –
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Date: 4/18/19

In the Matter of Panther Siding & Windows, Inc.
Docket Number TSCA-02-2019-9267

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. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Dennis Kutner, President
Panther Siding and Windows, Inc.
1786 Newbridge Road
North Bellmore, New York 11710

Kevin Tierney, Partner
Berenson LLP
4495 Military Trail, Suite 203
Jupiter, Florida 33458

Dated: 4/23/2019 
New York, New York

ATTACHMENT 1

RRP RULE COMPLIANCE WORKPLAN

Panther Siding & Windows, Inc.

RRP RULE COMPLIANCE PLAN

I. Introductory Statement.

This Compliance Plan (“the Plan”) is being implemented in order to promote compliance by Panther Siding & Windows, Inc., with the requirements for Residential Property Renovation, codified at Title 40 of the Code of Federal Regulations, Part 745, Subpart E, commonly known as the Renovation, Repair, and Painting (RRP) Rule. The Plan is designed to help ensure that covered companies and their employees, engaged in renovation activities involving residential “target housing” properties¹ and “child-occupied facilities,”² have the necessary guidance and/or training to conduct renovation activities in compliance with the RRP Rule. Because Panther Siding & Windows may engage in renovation activities involving residential “target housing” properties and “child-occupied facilities” from time to time, Panther Siding & Windows is hereby adopting this Plan.

IN THE EVENT OF ANY DISCREPANCY BETWEEN THE REQUIREMENTS IN THIS DOCUMENT AND THE RRP RULE, THE RRP RULE PREVAILS.

¹ “Target Housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. Section 2681(17); see also, 40 C.F.R. § 745.223.

² “Child-Occupied Facility” means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83.

II. Objective.

The objective of the Plan is to ensure Panther Siding & Windows' compliance with the RRP Rule where applicable. This Plan does not address compliance with EPA's other lead-based paint laws or regulations or those of other federal, state, or local agencies.

III. Applicability.

This Plan covers all Panther Siding & Windows' employees and Panther-engaged contractors and subcontractors working on projects involving the "renovation," as that term is defined at *40 C.F.R. § 745.83*, of property originally constructed prior to 1978. Note, that in addition to pre-1978 residential structures and child-occupied facilities, the conversion of any class of property (e.g., Commercial, Industrial, etc.) constructed prior to 1978 to residential use makes such property subject to the requirements of *40 C.F.R. Part 745* and this Plan.

IV. Procedures.

This document, created and adopted by Panther Siding & Windows, sets forth procedures that will address the following broad categories of compliance that apply to the Rule cited above:

- A) Obtaining, maintaining and renewing the EPA RRP-Firm Certification(s);
- B) Obtaining, Maintaining and renewing RRP Certifications of Individual Renovators, which are issued by EPA-accredited training providers;
- C) On-the-job training of uncertified Panther Siding & Windows' employees who perform RRP work;
- D) Pre-renovation education of owners and occupants;
- E) Compliance with lead-safe work practice standards for renovation projects;
- F) Compliance with post-renovation cleaning verification;
- G) Creation and retention of records of compliance; and
- H) Management of general contractor/subcontractor roles for RRP Rule projects.

A. Individual certification(s).

RRP Rule – Panther Siding & Windows has obtained EPA RRP Firm Certification for the EPA RRP Firm Certification for the RRP Rule Under certificate number NAT-50726-2, valid from June 1, 2015 through June 9, 2020. Prior to Panther Siding & Windows' license expiring it will take the necessary steps to renew its firm's license.

B. Individual certification(s).

Panther Siding & Windows' individual Renovators certifications shall be kept in an electronic file database that is monitored by Panther Siding & Windows. As expiration dates near, Renovators shall be scheduled for a "Refresher" class at an EPA-accredited training provider. Once training is completed, certifications for individual renovators are issued by the training provider as a course completion certificate upon completion of the course.

C. Training of Respondent employees.

RRP Rule - As the general contractor, whenever Panther Siding & Windows undertakes a project that is subject to the RRP Rule, it will ensure that a RRP Certified Renovator(s) (appropriately trained individual(s) in possession of a current Renovator certificate issued by an EPA-accredited training provider (school)) is assigned to that project. The assigned Certified Renovator(s) may be an employee(s) of Panther Siding & Windows, or of a subcontractor(s) Panther Siding & Windows engages. This assigned Certified Renovator(s) will be responsible, in part, for compliance with the RRP Rules for that project, and in that

role must perform, and document, a number of specific RRP Rule compliance-related functions.

1. **Assigned Certified Renovator(s)** - If Panther Siding & Windows chooses an employee(s) as the assigned Certified Renovator(s), that employee(s) must have valid and current Renovator certification from an EPA-accredited training provider before such employee(s) can serve the Certified Renovator function.

2. If Panther Siding & Windows is involved in multiple concurrent projects, Panther Siding & Windows will be required to ensure the availability of a sufficient number of Certified Renovators to maintain proper coverage and insure compliance with the RRP Rule at all renovations.

3. If the only Certified Renovator on a specific project is the assigned Certified Renovator, then the Certified Renovator must train the other workers who are performing RRP work on the lead-safe work practices required by the RRP Rule. The Certified Renovator will create a record of this training, and Panther Siding & Windows will retain that record, as well as the other RRP records of compliance contained in the RRP Compliance Packet which is Attachment 2

D. Pre-Renovation Education.

Whether or not Panther Siding & Windows engages a contractor or subcontractor on a project, Panther Siding & Windows will ensure compliance with the Information Distribution (Renovate Right booklet) requirements of the RRP Rule.

E. Work Practice Standards.

Whether or not Panther Siding and Windows engages a contractor or subcontractor on a project, Panther Siding & Windows will ensure compliance with the work practice standards (both renovation and post-renovation cleaning verification) of the RRP Rule.

F. Records Retention.

1. Panther Siding & Windows will generate and maintain the following records of compliance with the RRP Rule for each renovation it conducts:

- Documentation that one or more certified renovators was assigned to each project, including the name of each individual certified renovator assigned and a copy of his or her current certificate;
- Documentation that a certified renovator provided on the job training and direction to workers who performed the renovation;
- Documentation that a certified renovator performed the post-renovation cleaning verification;
- Signed and dated acknowledgements of receipt of the Renovate Right pamphlet from both owners and/or occupants (i.e., pre-renovation education) or certificates of mailing providing proof of attempted distribution of the Renovate Right pamphlet.
- Documentation of results of any testing performed by an inspector, risk assessor or certified renovator;
- Documentation that when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier,

Panther Siding & Windows provided information pertaining to compliance with the RRP to the owner of the building and, if different, an adult occupant of the dwelling, or if the renovation took place in a child-occupied facility, an adult representative of the child-occupied facility.

- Documentation of compliance with any other provisions of the RRP Rule not specified above.

2. Panther Siding & Windows will maintain these records for each renovation for a minimum of 3 years after completion of the work. If the specified documents are maintained in hard copy, all such documents covering all projects with RRP Rule requirements, shall be maintained at Panther Siding & Windows' office located at 1786 Newbridge Rd, North Bellmore, NY 11710, in a central file dedicated to RRP Rule documentation, with copies of the specified documents to be kept with the individual project files (including scope of work, contracts, proof of payment). If hard copy records are not maintained, the specified records shall be maintained electronically in a folder dedicated to RRP Rule documentation and in an easily-accessible format, and copies of the specified RRP-compliance documents shall also be kept with the individual project files or folders. All electronic files containing the specified documents shall be backed up regularly and copies shall be maintained off-site, in the cloud or on some independent medium to prevent inadvertent loss or destruction of the data. Records shall be maintained in PDF format or another format to prevent modification of historical data.

3. Any and all records shall be submitted to EPA upon request.

G. Managing general contractor/subcontractor roles for projects subject to the RRP Rule.

1. Whenever Panther Siding & Windows engages any contractor or subcontractor on a project, Panther Siding & Windows will ensure RRP compliance (worker training, lead-safe work practices, record keeping, etc.), creation and retention of all records of compliance (and provide copies to whichever firm contracted the work to Panther Siding & Windows), and information distribution (“Renovate Right” booklet (<https://www.epa.gov/lead/materials-and-downloads-renovators-renovation-repair-and-painting>), etc.) to the owner and/or tenants, as required/applicable.

2. Before Panther Siding & Windows engages any contractor or subcontractor on a project, Panther Siding & Windows will seek (and retain) documentation that any such firm is EPA-certified for RRP. Panther Siding & Windows shall also seek and retain documentation that any such subcontractor uses certified/trained workers at a renovation as required/applicable and that a specifically identified Certified Renovator has been assigned as the Certified Renovator to satisfy the assigned Certified Renovator responsibilities OR Panther Siding & Windows will perform all such tasks itself. Upon completion of the project, Panther Siding & Windows will ensure all requirements of the RRP Rule are met and Panther Siding & Windows will require the subcontractor to provide Panther Siding & Windows with a copy of all records of compliance that Panther Siding & Windows will then retain in its files for a minimum of 3 years after completion of the project.

PANTHER SIDING & WINDOWS, INC.

LEAD PAINT REGULATIONS COMPLIANCE PLAN

**COMPLIANCE PLAN AUTHORIZATION AND EFFECTIVE DATE (ATTESTED BY
HIGHEST CORPORATE OFFICER)**

Dennis Kutner, President
Name and Title

4/10/19
Date


Signature of Authorized Officer

4/10/19
Date

Dennis Kutner
Print Name of Authorized Officer

President
Title