



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. Environmental
Protection Agency - Region 2
2019 JUL 11 PM 3:07
REGIONAL JUDICIAL
CLERK

JUL 11 2019

CERTIFIED MAIL --

RETURN RECEIPT REQUESTED

Article Number: 7018 2290 0000 4960 8222

Mr. Derlin Colon
Total Change Inc.
144-30 35th Avenue, Apt 2A
Flushing, NY 11354

Re: In the Matter of Total Change Inc, Docket No. TSCA-02-2019-9287

Dear Mr. Colon:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency.

Please note that payment is due within thirty (30) days of the date on which the Regional Judicial Officer signed the enclosed Consent Agreement and Final Order. Please arrange for payment of this penalty according to the schedule and instructions given in the Order.

Sincerely yours,

Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
OF EPHK
2019 JUL 11 PM 3:07
U.S. Environmental
Protection Agency-Region 2

-----X
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In the Matter of :
:
Total Change, Inc., : CONSENT AGREEMENT
:
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:
:
Respondent : AND
:
:
Docket No. : TSCA-02-2019-9287
:
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
:
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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 Total Change, Inc. (“Respondent”).
2. Respondent’s primary place of business is located at 144-30 35th Avenue, Apt. 2A, Flushing, NY 11354.
3. Respondent is engaged in the business of residential renovation.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83, with EPA Firm Certification No.LBP-F166988-1 valid from July 19, 2016 to August 2, 2019.
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, including Residential Property Renovation at 40 C.F.R. Part 745, Subpart E [the “Renovation, Repair and Painting (“RRP”)] Rule.
6. 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 environments.
7. 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 of 40 C.F.R. Part 745, Subpart E, unless (1) the firm has first made or obtained a determination in writing that the

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.

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. § 745.82, or (2) the renovation is, itself, a minor repair and maintenance activity as defined at 40 C.F.R. § 745.83.

8. On June 22, 2016, the United States Environmental Protection Agency, Region 2 (“EPA”), received a tip/complaint about dust at a residential renovation at 68 Montague Street, Brooklyn, NY (“Montague Street worksite”). On June 23, 2016, the New York City Department of Health and Mental Hygiene (“NYCDOHMH”) inspected the site and referred the matter to EPA on June 27, 2016.

9. In an Information Request Letter (“IRL”) dated August 2, 2016, EPA requested that Respondent provide a written response to EPA’s questions regarding the renovations at the Montague Street worksite. Respondent submitted a response to the IRL dated August 9, 2016.

10. Based on the information provided by Respondent and NYCDOHMH, EPA determined that Respondent had performed renovations subject to the RRP Rule at the Montague Street worksite on or about June 22, 2016:

11. EPA further alleges that at the Montague Street worksite, Respondent:
 - a. performed renovations subject to the RRP Rule without obtaining initial firm certification from EPA, as required by 40 C.F.R. § 745.81(a)(2)(ii);
 - b. failed to establish and maintain records of compliance for the renovation conducted, as required by 40 C.F.R. § 745.87(b); and
 - c. failed to contain waste from renovation activities to prevent the release of dust and debris, as required by 40 C.F.R. § 745.85(a)(4)(i);

12. 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.

13. 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).

14. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), a violator may be subject to civil penalties up to \$38,114 per violation per day for each violation committed after November 2, 2015, for which a penalty is assessed on or after January 15, 2017.

15. Respondent submitted financial information and documentation to EPA on February 13, 2019 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 February 13, 2019 regarding Respondent's financial condition is accurate, complete, and not misleading. Respondent understands that EPA has relied on the accuracy of the 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 **TWENTY THOUSAND DOLLARS (\$20,000.00)** in accordance with the payment terms and schedule set forth in Paragraph 6 below and according to one of the payment transmittal methods in subparagraph a or b below.

a. If payment is made by check, the 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

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 a notation thereon listing the following: In the Matter of Total Change, Inc., and shall bear the Docket No. TSCA-02-2019-9287.

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 each 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: Total Change, Inc.; and
- 7) Case Docket Number **TSCA-02-2019-9287**

6. The civil penalty of \$20,000, set forth in paragraph 5, above, shall be paid within thirty (30) calendar days of the date on which the Regional Judicial Officer signs the Final Order. 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.

7. 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.

- a. Interest. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum for calendar year 2018.
- b. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. 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. The civil penalty provided for herein is a “penalty” within the meaning of 26 U.S.C. § 162(f), is not a deductible expenditure for purposes of federal, state or local law.

9. Any responses, documentation, and communication submitted to EPA in connection with this Consent Agreement shall be sent to:

Jerry Somma
Enforcement Officer
Lead Paint & Pesticides Compliance Section
Pesticides and Toxic Substances Compliance Branch
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837

and

Stuart Keith, 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:

Derlin Colon
Total Change, Inc.
144-30 35th Avenue, Apt 2A
Flushing, NY 11354

10. 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 the Findings of Fact and Conclusions of Law set forth above.

11. Full payment of the penalty described in paragraph 5, above, shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 11 (a) through (c) 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.

12. 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.

13. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

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

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

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

17. 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.

18. 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 this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

19. 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.

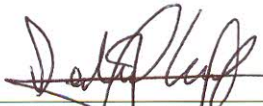
20. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

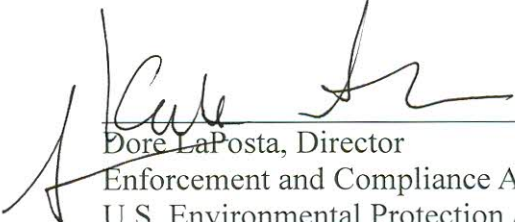
21. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

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

23. 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 Total Change, Inc.
Docket Number TSCA-02-2019-9287

RESPONDENT: BY: 
(SIGNATURE)
NAME: Daniel Colon
(PLEASE PRINT)
TITLE: President
DATE: 6-25-2019

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

DATE: JUL - 9 2019

In the Matter of Total Change, Inc.
Docket Number TSCA-02-2019-9287

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 Total Change, Inc., Docket Number TSCA-02-2019-9287. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. 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)). 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.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency –
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Date: 7/11/2019

In the Matter of Total Change, Inc.
Docket Number TSCA-02-2019-9287

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing Docket Number TSCA-02-2019-9287, 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:

Derlin Colon
Total Change, Inc.
144-30 35th Avenue, Apt 2A
Flushing, NY 11354

Dated:

7/11/19
New York, New York

