



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2015 SEP 28 PM 3: 04

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: TSCA-08-2015-0001

IN THE MATTER OF:

FORTUNE HOMES, INC.
8355 Cooper River Road
Colorado Springs, CO

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 28 DAY OF September, 2015.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 SEP 21 PM 12:12

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Fortune Homes, Inc.)
8355 Cooper River Road)
Colorado Springs, CO 80920)

Respondent.)

EXPEDITED SETTLEMENT AGREEMENT

DOCKET No: TSCA-08-2015-0001

AUTHORITY

1. This Expedited Settlement Agreement (the Agreement), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated officials, and by Fortune Homes, Inc. (Respondent) pursuant to sections 16 and 409 of the Toxic Substances and Control Act (the Act), 15 U.S.C. §§ 2613, 2689, and 40 C.F.R. §§ 22.13(b), 22.18.

RESPONDENT

2. Respondent is a "person" for purposes of sections 16 and 409 of the Act, 15 U.S.C. §§ 2613, 2689.
3. Respondent is a "firm" and a "renovator" as the terms are defined in 40 C.F.R. § 745.83.

ALLEGED VIOLATIONS

4. On February 23, 2015, an authorized representative of the EPA conducted a compliance inspection at the Respondent's jobsite at 1003 Norwood Avenue, Colorado Springs, Colorado (the Jobsite) to determine compliance with the Renovation, Repair and Painting (RRP) Rule, 40 C.F.R. part 745 subpart E.
5. The Jobsite is a residential housing property constructed prior to 1978 and is "target housing" as the term is defined in 40 C.F.R. § 745.103.
6. Respondent conducted a "renovation," as the term is defined in 40 C.F.R. § 745.83, by removing painted surfaces at the Jobsite for compensation.
7. Firms performing renovations on target housing must apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a).
8. Respondent failed to obtain initial certification from the EPA prior to performing a renovation on housing constructed prior to 1978, as required by 40 C.F.R. § 745.89(a) and in violation of 40 C.F.R. § 745.81(a)(2)(ii).

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9. Firms performing renovations on target housing must retain all records necessary to demonstrate compliance with the RRP Rule for a period of three (3) years following completion of the renovation activities as required by 40 C.F.R. § 745.86(a).
10. The EPA found that Respondent was unable to provide records documenting compliance with the RRP Rule for work at this Jobsite. Respondent therefore failed to keep records documenting compliance with the RRP Rule for work at the Jobsite, as required by 40 C.F.R. § 745.86(a).
11. Respondent's failure to comply with 40 C.F.R. §§ 745.81 and 745.86(a) is a violation of the RRP regulations promulgated under section 402 of the Act, 15 U.S.C. § 2682 and therefore a violation of section 409 of the Act, 15 U.S.C. § 2689.

SETTLEMENT

12. 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 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.
13. Pursuant to section 16 of the Act, 15 U.S.C. § 2615, and based in part on the size of business, the nature, circumstances, extent and gravity of the violations alleged, and other relevant factors, EPA agrees that an appropriate civil penalty to settle this matter is **\$400 (four hundred dollars)**.
14. By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Agreement have been corrected, and (2) Respondent is submitting payment of the civil penalty as described below.

Within fourteen (14) days of receipt of this Agreement, Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$400 in payment of the full penalty amount to the following address:

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

**The following Payment Number for this Agreement must be included on the check:
ESA-R8-TSCA-15-001**

The signed Agreement and a copy of the check must be sent by certified mail to:

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

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15. Respondent agrees that the penalty specified in this Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
16. This settlement is subject to the following terms and conditions with respect to the violations alleged:
 - a. Respondent, by signing below, admits the jurisdictional allegations of the complaint, neither admits nor denies the specific factual allegations contained in the Agreement and consents to the assessment of the penalty as stated above.
 - b. Each party to this action shall bear its own costs and attorney fees, if any.
 - c. Payment by Respondent shall constitute a waiver of any and all available rights to judicial or administrative review or other remedies that the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Agreement, including any right to appeal the final order.
17. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Agreement.
18. This Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this 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 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.
19. If the signed original Agreement with an attached copy of the check is not returned to the EPA Region 8 at the above address in correct form by Respondent within fourteen (14) days of the date of Respondent's receipt of this Agreement the proposed Agreement is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this Agreement.
20. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or 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 Agreement. This Agreement contains all terms of the settlement agreed to by the Parties.
21. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Agreement and to bind Respondent to the terms and conditions of this Agreement.

Fortune Homes, Inc.
EXPEDITED SETTLEMENT AGREEMENT

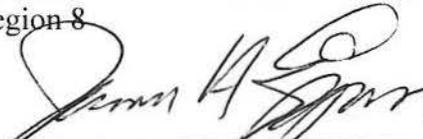
22. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
23. The Parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,

Date: 9/15/15

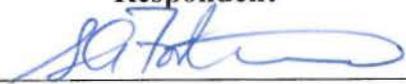
Complainant
By: 
David Cobb, Acting Supervisor
Toxics Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-AT)
U.S. Environmental Protection Agency,
Region 8

Date: 9/17/15

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

Fortune Homes, Inc.

Date: 9-9-15

Respondent
By: 

Printed Name: SCOTT A. FORTUNE

Title: OWNER

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in the matter of **FORTUNE HOMES, INC. .; DOCKET NO.: TSCA-08-2015-0001** was filed with the Regional Hearing Clerk on September 21, 2015; **THE FINAL ORDER** was filed on September 28, 2015.

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 September 28, 2015 to:

Respondent:

Scott Fortune, Owner
Fortune Homes, Inc.
8355 Cooper River Road
Colorado Springs, CO 80920

And emailed to:

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

September 28, 2015



Michael C. Nelson
Acting Regional Hearing Clerk

