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

10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION 9

13 **In the Matter of:**

14 **Holtzman Home Improvement, LLC**
15 **Respondent.**

Docket No. TSCA-09-2018- 0003

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency ("EPA"), Region 9, and Holtzman
18 Home Improvement, LLC ("Respondent") agree to settle this matter and consent to the entry of
19 this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and
20 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 **I. AUTHORITY, JURISDICTION AND PARTIES**

22 1. This is a civil administrative penalty action brought against Respondent pursuant to
23 Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation
24 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of
25 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing rules issued at 40 C.F.R. Part 745,
26 Subpart E – Residential Property Renovation ("Subpart E").
27

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1 2. Complainant is the Chief, Waste and Chemical Section, Enforcement Division, EPA,
2 Region 9, who has been duly delegated the authority to bring and settle this action under TSCA.

3 3. Respondent, an Arizona corporation located in Tempe, Arizona, is a residential design
4 and remodeling service company.
5

6 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

7 4. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), Subpart E
8 sets forth requirements for certification of firms and individuals engaged in lead-based paint
9 activities and work practice standards for renovation, repair and painting activities in target
10 housing.
11

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

16 6. "Target housing" means any housing constructed prior to 1978, except housing for the
17 elderly or persons with disabilities (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. Section 401 of TSCA, 15
19 U.S.C. § 2681.

20 7. "Renovation" means the modification of any existing structure, or portion thereof, that
21 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
22 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the
23 removal, modification or repair of painted surfaces or painted components (e.g., modification of
24 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
25 scraping, or other such activities that may generate paint dust)); the removal of building
26
27

1 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
2 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
3 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
4 term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.
5

6 8. “Painted surface” means a component surface covered in whole or in part with paint or
7 other surface coatings. 40 C.F.R. § 745.83.

8 9. “Renovator” means any individual who either performs or directs workers who perform
9 renovations. A certified renovator is a renovator who has successfully completed a renovator
10 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.
11

12 10. “Person” means any natural or judicial person including any individual, corporation,
13 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any
14 interstate body; and any department, agency, or instrumentality of the Federal Government. 40
15 C.F.R. § 745.83.

16 11. “Firm” means a company, partnership, corporation, sole proprietorship, or individual
17 doing business, association, or other business entity; a Federal, State, Tribal, or local government
18 agency; or a nonprofit organization. 40 C.F.R. § 745.83.
19

20 12. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead Hazard
21 Information for Families, Child Care Providers and Schools,” developed under Section 406(a) of
22 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet
23 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40
24 C.F.R. § 745.83.
25

26 13. No firm may perform, offer, or claim to perform renovations without certification from
27

1 EPA under §745.89 in target housing, unless the renovation qualifies for the exception involving
2 a lead-free determination identified at § 745.82(a). 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

3 14. No more than 60 days before beginning renovation activities in any residential dwelling
4 unit of target housing, the firm performing the renovation must provide the owner of the
5 unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 745.83, and either obtain from the
6 owner a written acknowledgment that the owner has received the “pamphlet” or obtain a
7 certificate of mailing the “pamphlet” at least 7 days prior to the renovation. 40 C.F.R.
8 § 745.84(a)(1).
9

10 15. Firms performing renovations must ensure that a certified renovator is assigned to each
11 renovation performed by the firm and discharges all of the certified renovator responsibilities
12 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).
13

14 16. Firms performing renovations must retain documentation of compliance with the
15 requirements of § 745.85, including documentation that a certified renovator was assigned to the
16 project; that the certified renovator provided on-the-job training for workers used on the project;
17 that the certified renovator performed or directed workers who performed all of the work practice
18 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
19 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).
20

21 17. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
22 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
23 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
24 \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
25 after January 12, 2009 but on or before November 2, 2015, and authorize civil penalties not to
26
27

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1 exceed \$38,892 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
2 occurred after November 2, 2015 where penalties are assessed on or after January 15, 2018.

3 **III. ALLEGATIONS**

4
5 18. At all times relevant to this CAFO, Respondent was a “person,” as that term is defined at
6 40 C.F.R. § 745.83.

7 19. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at 40
8 C.F.R. § 745.83.

9 20. At all times relevant to this CAFO, the properties at 712 E. Geneva Drive (“Geneva
10 Property”) and 713 E. Erie Drive (“Erie Property”) (collectively, “the Properties”) in Tempe,
11 Arizona were “target housing,” as that term is defined at Section 401 of TSCA, 15 U.S.C.
12 § 2681.

13
14 21. Within the period of October 2015 to October 2016, Respondent performed at least one
15 “renovation,” as that term is defined at 40 C.F.R. § 745.83, at the Geneva Property and at the
16 Erie Property for compensation. The renovations performed at the Properties within the October
17 2015 to October 2016 time frame are referenced in this CAFO as “Renovations.”

18
19 CLAIM 1

20 22. Paragraphs 1-21 of this CAFO are realleged and are incorporated herein by reference.

21 23. Respondent performed the Renovations at the Properties without firm certification
22 pursuant to 40 C.F.R. § 745.89.

23
24 24. With respect to the Renovations, Respondent did not qualify for the exception involving a
25 lead-free determination identified in 40 C.F.R. § 745.82(a).

26 25. Respondent's performance of Renovations at the Properties without firm certification
27

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1 pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of TSCA, 15 U.S.C.
2 § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

3 CLAIMS 2-3

4 26. Paragraphs 1-25 of this CAFO are realleged and are incorporated herein by reference.

5
6 27. Respondent did not obtain from the owners of the Geneva Property and Erie Property a
7 written acknowledgment that they received the “pamphlet,” as that term is defined at 40 C.F.R.
8 § 745.83, or obtain a certificate of mailing the “pamphlet” at least 7 days prior to the
9 Renovations.

10
11 28. Respondent's failures to obtain from the owners of the Geneva Property and Erie Property
12 written acknowledgments that they received the “pamphlet,” as that term is defined at 40 C.F.R.
13 § 745.83, or obtain certificates of mailing the “pamphlet” at least 7 days prior to the
14 Renovations, constitute two violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
15 § 745.84(a)(1).

16 CLAIMS 4-5

17
18 29. Paragraphs 1-28 of this CAFO are realleged and are incorporated herein by reference.

19 30. Respondent did not ensure that certified renovators discharged all of the certified
20 renovator responsibilities identified in § 745.90 for the Renovations performed at the two
21 Properties.

22
23 31. Respondent's failures to ensure that certified renovators discharged all of the certified
24 renovator responsibilities identified in § 745.90 for the Renovations performed at the two
25 Properties constitute two violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
26 § 745.89(d)(2).

27
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1 CLAIMS 6-13

2 32. With respect to the Renovations at the two Properties, Respondent did not retain
3 documentation that certified renovators were assigned to the projects; that certified renovators
4 provided on-the-job training for workers used; that certified renovators performed or directed
5 workers who performed all of the work practice tasks described in § 745.85(a); and that certified
6 renovators performed the post-renovation cleaning verifications described in § 745.85(b).
7

8 33. Respondent's failures to retain documentation that certified renovators were assigned to
9 the projects; that certified renovators provided on-the-job training for workers used; that certified
10 renovators performed or directed workers who performed all of the work practice tasks described
11 in § 745.85(a); and that certified renovators performed the post-renovation cleaning verification
12 described in § 745.85(b) for the Renovations performed at the two Properties constitute eight
13 violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.86(b)(6).
14

15 **IV. RESPONDENT'S ADMISSIONS**

16 34. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
17 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
18 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
19 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
20 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
21 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
22 Final Order contained in this CAFO.
23
24

25 **V. CIVIL ADMINISTRATIVE PENALTY**

26 35. Respondent agrees to the assessment of a penalty in the amount of EIGHTEEN
27

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1 THOUSAND THREE HUNDRED FIFTEEN DOLLARS (\$18,315) as final settlement of the
2 civil claims against Respondent arising under TSCA as alleged in Section III of this CAFO.

3 36. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
4 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
5 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
6 as follows:
7

8 Regular Mail:

9 U.S. Environmental Protection Agency
10 Fines and Penalties
11 Cincinnati Finance Center
12 PO Box 979077
13 St. Louis, MO 63197-9000

14 Wire Transfers:

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

17 Federal Reserve Bank of New York
18 ABA = 021030004
19 Account = 68010727
20 SWIFT address = FRNYUS33
21 33 Liberty Street
22 New York, NY 10045
23 Field Tag 4200 of the Fedwire message should read "D 68010727
24 Environmental Protection Agency"

25 Overnight Mail:

26 U.S. Bank
27 1005 Convention Plaza
28 Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury Facility
5700 Rivertech Court

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1 Riverdale, MD 20737
2 Remittance Express (REX) 1-866-234-5681

3 On Line Payment:

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

5 www.pay.gov

6 Enter "sfo1.1" in the search field

7 Open form and complete required fields

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

10 Concurrently, a copy of the check or notification that the payment has been made by one of the
11 other methods listed above, including proof of the date payment was made, shall be sent with
12 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
13 following addressees:

14 Regional Hearing Clerk
15 Office of Regional Counsel (ORC-1)
16 U.S. Environmental Protection Agency, Region 9
17 75 Hawthorne Street
18 San Francisco, California 94105

19 Max Weintraub
20 Waste & Chemical Section (ENF-2-2)
21 Enforcement Division
22 U.S. Environmental Protection Agency, Region 9
23 75 Hawthorne Street
24 San Francisco, CA 94105

25 37. Payment of the above civil administrative penalty shall not be used by Respondent or any
26 other person as a tax deduction from Respondent's federal, state, or local taxes.

27 38. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
28 35 by the deadline specified in Paragraph 36, then Respondent shall pay to EPA a stipulated
penalty of \$100 per day in addition to the assessed penalty. Stipulated penalties shall accrue
until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
become due and payable upon written request by EPA. In addition, failure to pay the civil

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1 administrative penalty by the deadline specified in Paragraph 36 may lead to any or all of the
2 following actions:

3 a. The debt being referred to a credit reporting agency, a collection agency, or to the
4 Department of Justice for filing of a collection action in the appropriate United States District
5 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
6 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
7

8 b. The debt being collected by administrative offset (i.e., the withholding of money payable
9 by the United States to, or held by the United States for, a person to satisfy the debt the person
10 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
11 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
12

13 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
14 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
15 or funds. 40 C.F.R. § 13.17.
16

17 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
18 penalties charges, and administrative costs will be assessed against the outstanding amount that
19 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
20 deadline specified in Paragraph 36. Interest will be assessed at an annual rate that is equal to the
21 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
22 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
23 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
24 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
25 Administrative costs for handling and collecting Respondent's overdue debt will be based on
26
27

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

7 **VI. RESPONDENT'S CERTIFICATION**

8 39. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
9 federal regulations promulgated at Subpart E.
10

11 **VII. RETENTION OF RIGHTS**

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

22 41. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
23 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
24 permits.
25

26 **VIII. ATTORNEYS' FEES AND COSTS**

27

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1 42. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
2 proceeding.

3 **IX. EFFECTIVE DATE**

4 43. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
5 on the date that the final order contained in this CAFO, having been approved and issued by
6 either the Regional Judicial Officer or Regional Administrator, is filed.
7

8 **X. BINDING EFFECT**

9 44. The undersigned representative of Complainant and the undersigned representative of
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
11 of this CAFO and to bind the party he or she represents to this CAFO.
12

13 45. The provisions of this CAFO shall apply to and be binding upon Respondent and its
14 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
15 and assigns.
16

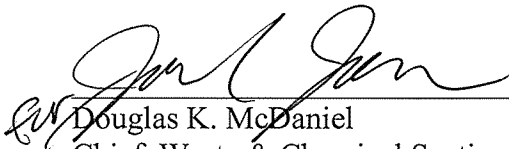
17
18 FOR RESPONDENT, MONTGOMERY-SANSOME, LP

19 5-9-18
20 DATE


21 Name
22 Title
23 Holtzman Home Improvement, LLC

24 FOR COMPLAINANT:

25 6-6-18
26 DATE


27 Douglas K. McDaniel
28 Chief, Waste & Chemical Section
Enforcement Division

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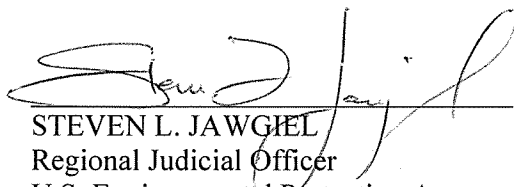
1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2018- ⁰⁰⁰³ _Λ) be

4 entered, and that Respondent shall pay a civil administrative penalty in the amount of
5 EIGHTEEN THOUSAND THREE HUNDRED FIFTEEN DOLLARS (\$18,315) and comply
6 with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and
7 Final Order shall become effective upon filing.
8

9
10 06/12/18
11 DATE

12 
13 STEVEN L. JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency,
16 Region 9

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28 In the Matter of: Holtzman Home Improvement, LLC
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CERTIFICATE OF SERVICE

I hereby certify that the original ~~and one copy~~ of the foregoing Consent Agreement and Final Order (In the Matter of: Holtzman Home Improvement, LLC, TSCA-09-2018-0003) has been filed with the Regional Hearing Clerk for U.S. EPA, Region 9, and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

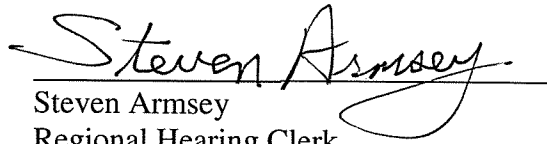
Alicia M. Casale
Murphy Karber Cordier PLC
2025 N. Third Street, Suite 200
Phoenix, AZ 85004

Certified Mail # 7015 0640 0001 1118 0342

and Hand-Delivered to:

Brian P. Riedel
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Date: 2018-06-13


Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency,
Region 9