

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
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PDG Construction, LLC d/b/a : CONSENT AGREEMENT
Princeton Design Guild : AND
:
:
Respondent : FINAL ORDER
:
Docket No.
TSCA-02-2016-9169
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
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U.S. Environmental
Protection Agency-Region 2
2016 SEP -9 AM 8:18
REGIONAL HEARING
CLERK

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 PDG Construction, LLC d/b/a Princeton Design Guild (“PDG” or “Respondent”).
2. Respondent’s primary place of business is located at 43 Reading Boulevard, Bell Meade, New Jersey 08502.
3. Respondent is a “certified firm” as that term is defined at 40 C.F.R. § 745.89.
4. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting (RRP) Rule”).
5. On or about July 31, 2013, representatives of the United States Environmental Protection Agency, Region 2 (“EPA”) conducted an inspection at residential target housing property constructed prior to 1978, located at 62 North Greenwood Avenue, Hopewell, New Jersey (the “Property”), where renovations were being conducted by Respondent’s firm.
6. On June 5, 2014, EPA sent an Information Request Letter (“IRL”) to Respondent as part of EPA’s investigation of Respondent’s work practice standards while conducting renovations at the Property.
7. On or about June 26, 2014, Respondent submitted its response to EPA’s IRL.
8. Based in part on Respondent’s IRL responses, EPA determined that Respondent, as a firm that performs, offers or claims to perform renovations or dust sampling for compensation, failed to obtain initial certification from EPA, as required by 40 C.F.R. § 745.89(a).
9. EPA further determined that Respondent’s firm, before beginning the renovation, failed to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing

renovation or a sufficient distance to contain the dust, whichever is greater, pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D).

10. EPA further determined that Respondent's firm failed to contain waste to prevent release of dust and debris during the transport of waste from renovation activities, pursuant to 40 C.F.R. § 745.85(a)(4)(iii).

11. EPA further determined that Respondent's firm failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed, pursuant to 40 C.F.R. § 745.85 (a)(1).

12. EPA further determined that Respondent's firm failed to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C).

13. On March 19, 2015, and March 18, 2016, EPA and Respondent held informal pre-filing settlement conferences at Respondent's request to discuss Respondent's violations of the RRP Rule.

14. As a result of the informal settlement conferences, the parties agreed to settle this matter by entering into this Consent Agreement.

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 it is currently in compliance with the statutory provisions of TSCA and the Renovation, Repair and Painting regulations codified at 40 C.F.R. Part 745, Subpart E.
3. 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.
4. Respondent shall pay, by cashier’s or certified check or electronic fund transfer, a civil penalty in the amount of **TEN THOUSAND DOLLARS (\$10,000)** according to the following schedule:
 - a.) \$5,000 due on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document; and
 - b.) \$5,000 due on or before **180 calendar days** after the date of the signature of the Final Order at the end of this document;
5. Payments must be received at the address listed in Paragraph 8, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due dates specified

above (the date by which each such payment must be received shall hereafter be referred to as the "due date").

- a.) If Respondent fails to pay any of the installments required above, by its due date, Respondents shall also be liable to EPA for an additional stipulated penalty of \$500 for each such failure. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondents' receipt from EPA of a written demand for payment of the penalties. Payment of stipulated payments shall be made in the same manner as prescribed in Paragraph 8, below, for payment of the civil penalty installments. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondents of the violation or has made a demand for payment, but need only be paid upon demand. EPA, in its sole discretion, may reduce or eliminate any stipulated penalty due under this sub-paragraph.
- b.) Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection or other appropriate action.
- c.) Further, if any payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

d.) A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

6. In the event of respondent's failure to make any payment when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest and stipulated penalties then unpaid immediately due and payable.

7. In agreeing to this settlement, EPA relies, in part, on its review of documents Respondent provided showing its recent and current financial condition. Respondent hereby certifies the truth and accuracy of the financial documents provided to EPA.

8. If a payment is made by cashier's or certified check, each such payment shall be payable to the "Treasurer of the United States of America." Each check shall be identified with a notation of the name and docket number of this case, as set forth in the caption on the first page of this document. Such check shall be mailed to:

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

Alternatively, if Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- 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 "**D 68010727
Environmental Protection Agency**"
- 6) Name of Respondent: **PDG Construction, LLC d/b/a Princeton Design
Guild**
- 7) Case Docket Number TSCA-02-2016-9169

Respondent shall also promptly send copies of these checks or furnish reasonable proof that such EFT payments have been made to both:

Melva J. Hayden, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

9. The civil penalties and any stipulated penalties 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 or state law.
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. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law.
12. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.
13. Respondent consents to the issuance of the accompanying Final Order.
14. Respondent agrees that all terms of settlement are set forth herein.

15. 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.

16. 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.

17. The 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 State to enforce the provisions of this Consent Agreement and Final Order.

18. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

19. 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 regulation, 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.


20. 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.

21. Each party hereto agrees to bear its own costs and fees in this matter.
22. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of PDG Construction, LLC d/b/a Princeton Design Guild
Docket Number TSCA-02-2016-9169

PDG Construction, LLC d/b/a Princeton Design Guild

RESPONDENT:

BY: 

NAME: KEVIN WILKOS
(PLEASE PRINT)

TITLE: MANAGING MEMBER

DATE: 8/25/16

COMPLAINANT:

for Kathleen Mahone-Bogusz

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

DATE: 9/1/16

In the Matter of PDG Construction, LLC d/b/a Princeton Design Guild
Docket Number TSCA-02-2016-9169

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 PDG Construction, LLC d/b/a Princeton Design Guild, bearing Docket Number TSCA-02-2016-9169. 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.

DATE: Helen Ferrara 9/7/2016

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

In the Matter of PDG Construction, LLC d/b/a Princeton Design Guild
Docket Number TSCA-02-2016-9169

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:

Mr. Kevin Wilkes, President
PDG Construction, LLC d/b/a Princeton Design Guild
43 Reading Blvd.
Bell Meade, New Jersey 08502

Dated: September 9, 2016
New York, New York

Wanda Myer