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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN RE:)	DOCKET NO. TSCA-03-2014-0030
)	
)	
Thermo-Twin Industries, Inc.)	
1155 Allegheny Ave.)	CONSENT AGREEMENT
Oakmont, PA 15139)	Proceeding under Sections 16(a) and 409
)	of the Toxic Substances Control Act,
Respondent.)	15 U.S.C. §§ 2615(a) and 2689
)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant” or “EPA” or “Agency”) and Thermo-Twin Industries, Inc. (“Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent’s alleged failure to comply with Sections 15, 402(c) and 406(b) of TSCA, 15 U.S.C. §§ 2614, 2682(c) and 2686(b), Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. §4851 *et seq.*, and the federal regulations promulgated thereunder, entitled the “Renovation Repair and Painting Rule” as set forth at 40 C.F.R. Part 745, Subpart E (“RRP Rule”).
3. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Section IV (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges

of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.

III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO".
6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding *Subchapter IV – Lead Exposure Reduction*, TSCA Section 401 to 412, 15 U.S.C. §§ 2681 to 2692.
12. Section 402(c) of TSCA, 15 U.S.C § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings.
13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.

14. In 1998, and pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, EPA promulgated the Renovation, Repair and Painting Rule codified at 40 C.F.R. Part 745, Subpart E -- Residential Property Renovation ("RRP Rule").
15. Among other things, under the RRP rule, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and or painting activities in target housing and or child-occupied facilities; and persons must be employed by an EPA-certified renovation firm.
16. 40 C.F.R. § 745.83 defines "pamphlet" to mean, in relevant part, the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under 406(b) of TSCA.
17. 40 C.F.R. § 745.83 defines "person" to mean any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.
18. 40 C.F.R. § 745.83 defines "renovation" to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.
19. 40 C.F.R. § 745.83 defines "renovator" to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.
20. 40 C.F.R. § 745.103 defines "target housing" to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.
21. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

22. 40 C.F.R. § 745.83 defines “firm” to mean a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.
23. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, of the RRP rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d). Moreover, pursuant to 40 C.F.R. § 745.87(b), failure or refusal to establish and maintain the records required by the RRP Rule is a violation of both Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.
24. Respondent is, and was at the time of violations alleged herein, a “person” within the meaning of 40 C.F.R. § 745.83.
25. Respondent is, and was at the time of violations alleged herein, a “firm” and/or “renovator” as those terms are defined by 40 C.F.R. § 745.83.
26. Respondent performed the foregoing “renovations” as that term is defined by 40 C.F.R. § 745.83.
27. On January 11, 2012, a duly authorized EPA inspector conducted an inspection at Respondent’s place of business to determine Respondent’s level of compliance with the RRP Rule.
28. As a result of the inspection, the inspector collected, among other things, three (3) renovation contracts, for renovations conducted at “target housing” as that term is defined by 40 C.F.R. § 745.103.
29. On or about May 16, 2011, Respondent signed a contract to perform a renovation on a property located at 1109 Middle Road, Glenshaw PA 15116. This property was constructed before 1978.
30. On or about June 30, 2011, Respondent signed a contract to perform a renovation on a property located at 106 Adolph Lane, Yukon PA 15698. This property was constructed before 1978.
31. On or about August 9, 2010, Respondent signed a contract to perform a renovation on a property located at 1135 Mission Road, Latrobe, PA 15650. This property was constructed before 1978.
32. The properties identified in paragraphs 29-31 , above, are “target housing” as that term is defined by 40 C.F.R. § 745.103.

V. VIOLATIONS

Counts I - II

33. The allegations contained in Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
34. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm must provide Pre-Renovation Education (“PRE”) information in the form of an EPA approved lead hazard information “Pamphlet” to customers prior to performing renovations of target housing. Firms are also required to obtain, from the owner, a “written acknowledgement” that the owner has received the “Pamphlet”.
35. Pursuant to 40 C.F.R. § 745.84(d)(1), the “written acknowledgement” referred to in paragraph 34, above, must include, *inter alia*, the date upon which the owner signed the “written acknowledgement”.
36. Respondent failed to obtain the dates of the owners’ signatures with respect to the renovation projects at the target housing identified in paragraphs 29 and 31, above, thus constituting 2 separate violations of 40 C.F.R. § 745.84(d)(1).
37. Respondent’s failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count III

38. The allegations contained in Paragraphs 1 through 37 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
39. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A)(*interior renovations*), a firm must remove all objects from the work area, including furniture, rugs and window coverings, or cover them with plastic sheeting or other impermeable material with all the seams and edges taped or otherwise sealed.
40. With respect to the renovation project at the target housing identified in paragraph 30, above, Respondent failed to remove all objects from the work area, including furniture, rugs and window coverings, or cover them with plastic sheeting or other impermeable material with all the seams and edges taped or otherwise sealed, thus constituting a violation of 40 C.F.R. § 745.85(a)(2)(i)(A).
41. Respondent’s failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count IV

42. The allegations contained in Paragraphs 1 through 41 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
43. Pursuant to 40 C.F.R. § 745.85(a)(5), after the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.
44. With respect to the renovation project at the target housing identified in paragraph 30, above, Respondent failed to clean the work area until no dust, debris or residue remained after completing the renovation, thus constituting a violation of 40 C.F.R. § 745.85(a)(5).
45. Respondent's failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count V

46. The allegations contained in Paragraphs 1 through 45 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
47. Pursuant to 40 C.F.R. § 745.85(a)(5)(i)(A), after the renovation has been completed, the firm must collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.
48. With respect to the renovation project at the target housing identified in paragraph 30, above, Respondent failed to collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag after completing the renovation, thus constituting a violation of 40 C.F.R. § 745.85(a)(5)(i)(A).
49. Respondent's failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count VI

50. The allegations contained in Paragraphs 1 through 49 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
51. Pursuant to 40 C.F.R. § 745.85(a)(5)(ii)(B), after the renovation has been completed, the firm must thoroughly vacuum all remaining surfaces and objects in the work area with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.
52. With respect to the renovation project at the target housing identified in paragraph 30, above, Respondent failed to thoroughly vacuum all remaining surfaces and objects in the work area with a HEPA vacuum and/or failed to use a HEPA vacuum equipped with a

beater bar when vacuuming carpets or rugs, thus constituting a violation of 40 C.F.R. § 745.85(a)(5)(ii)(B).

53. Respondent's failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count VII

54. The allegations contained in Paragraphs 1 through 53 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
55. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm **and** discharges all of the certified renovator responsibilities identified in the relevant provisions of the RRP Rule.
56. With respect to the renovation project at the target housing identified in paragraph 30, above, Respondent failed to ensure that a certified renovator was assigned to the renovation performed by the firm **and** discharged all of the certified renovator responsibilities identified in the relevant provisions of the RRP Rule, thus constituting a violation of 40 C.F.R. § 745.89(d)(2).
57. Respondent's failure to perform the acts indicated above are violations of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

VI. CIVIL PENALTY

58. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Twenty Five Thousand, Six Hundred and ninety Dollars (\$25,690.00). The civil penalty amount is due and payable within thirty (30) days of the Respondent's receipt of both a true and correct copy of this Consent Agreement signed by all parties and the Final Order signed by the Regional Judicial Officer.
59. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities*

Rule” (August 19, 2010) in conjunction with 40 C.F.R. Part 19.

60. Payment of the civil penalty amount shall be made by either cashier’s check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2014-0030**;

b. All checks shall be made payable to “**United States Treasury**”;

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty shall be sent simultaneously to:

Benjamin Cohan
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

61. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
62. In accordance with 40 C.F.R. § 13.11(a), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11(a).
63. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
64. A penalty charge of six (6%) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
65. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

66. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section V ("Violations"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

67. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

68. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that it is currently in compliance with the provisions of TSCA, the RRP Rule and 40 C.F.R. Part 745, Subpart E.

X. RESERVATION OF RIGHTS

69. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18 (c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RRP Rule, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

70. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's officers and directors (in their official capacity), successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XII. EFFECTIVE DATE

71. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

72. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties,

covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

11-15-13
Date


Mr. Robert Sciullo, COO
Thermo-Twin Industries, Inc.

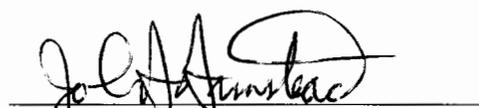
For Complainant:

11/25/13
Date


Benjamin Cohan, Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

12.12.13
Date


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re: Thermo-Twin Industries, Inc.
1155 Allegheny Ave.
Oakmont, PA 15139
Docket No. TSCA-03-2014-0030

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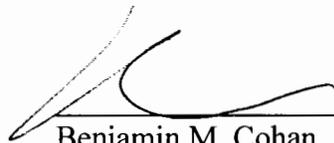
CERTIFICATE OF SERVICE AM 10:53

REGIONAL HEARING CLERK
EPA REGION III

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (re: Docket No. TSCA-03-2014-0030) was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via UPS overnight mail, to the following person:

Mr. Robert M. Sciullo
Thermo-Twin Industries, Inc.
1155 Allegheny Ave.
Oakmont, PA 15139

12/18/13
Date


Benjamin M. Cohan
Sr. Assistant Regional Counsel

