

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Filed October 01, 2020 @ 9:37am

USEPA – Region II

Regional Hearing Clerk

CONSENT AGREEMENT

AND

FINAL ORDER

Docket No. TSCA-02-2020-9174

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-----X
In the Matter of :
 :
Promethean Remodeling, L.L.C., :
 :
 :
Respondent. :
 :
 :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
-----X

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, set out at 40 Code of Federal Regulations ("C.F.R.") Part 22. Pursuant to 40 C.F.R. § 22.13(b), 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).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty... ." Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (Complainant) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Promethean Remodeling, L.L.C., ("Promethean" or "Respondent") agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Promethean Remodeling, L.L.C.
2. Respondent's primary place of business is located at 115 Water Street, Hackettstown, N.J.

3. Respondent, at all times relevant herein, is and was a “person” as that term is defined at 40 C.F.R. § 745.83.

4. Respondent is a firm that engages (and has engaged at all times relevant hereto) in renovation activities and 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.

5. The RRP Rule was promulgated to ensure that renovation activities in target housing 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 environment.

6. 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 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/cm^2) 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.

7. In 2016, Respondent conducted renovations at pre-1978 target housing located at:

- a. 1 Argyl Court, Scotch Plains, NJ
York, New York 10023; and
- b. 127 Selma Blvd., Randolph, NJ (the “Properties”).

8. The Properties were at all times relevant herein, and are, “target housing” as that phrase is defined by Section 401 of TSCA, 15 U.S.C. § 2681 and 40 C.F.R. § 745.103.

9. Respondent’s activities at the Properties constituted “renovations” as that term is defined by 40 C.F.R. § 745.83, performed for compensation.

10. On June 29, 2017, representatives of the United States Environmental Protection Agency, Region 2 (“EPA”), conducted an inspection (the “Inspection”) of Respondent’s primary place of business.

11. Based on review of the information provided by the Respondent during the Inspection, emails, and follow-up information sent to EPA, the Agency determined that the Respondent had conducted renovations at the Properties in violation of the RRP Rule.

12. Specifically, EPA found that Respondent, during renovations at the Properties, had failed to:

- a) obtain initial firm certification from EPA, as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89;
- b) ensure that a certified renovator was assigned to each renovation performed by the

firm and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2); and

- c) retain all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation, as required by 40 C.F.R. § 745.86(a).

13. 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.

14. Each of Respondent's alleged failures to comply with the RRP Rule constitutes an independent violation 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).

15. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), a violator may be subject to civil penalties up to \$39,873 per violation per day for each violation committed after November 2, 2015, for which a penalty is assessed on or after February 6, 2019.

16. On November 22, 2019, Region 2 sent Respondent a letter inviting Respondent to take advantage of a pre-filing opportunity to discuss a prospective enforcement action under TSCA.

17. On January 15, 2020, EPA held a pre-filing conference with Respondent to discuss EPA's findings regarding Respondent's alleged failures to comply with TSCA and the RRP Rule requirements during its renovation activities at the Properties.

18. During the January 15, 2020 meeting, Respondent shared copies of its 2016-2018 federal tax returns.

19. Subsequent to the January 15, 2020 meeting, Respondent submitted: (a) additional financial information, including estimated six-month 2020 sales earnings, on June 24, 2020; (b) a financial certification, dated July 28, 2020; and (c) a compliance plan, dated September 01, 2020.

20. The parties have agreed to settle this matter as set forth herein.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously, Respondent: (a) admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; (b) neither admits nor denies the "Findings of Fact and Conclusions of Law" as set forth above; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it may have to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying

Final Order shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the “effective date”). It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall, commencing on the date of the execution of the Final Order accompanying this Consent Agreement, maintain compliance with all applicable regulatory requirements of 40 C.F.R. Part 745, Subpart E, and adhere to the provisions of its compliance plan dated September 1, 2020.
2. Respondent shall pay a civil penalty to EPA in the amount of **ONE THOUSAND FIVE HUNDRED (\$1,500) DOLLARS**, exclusive of interest. This civil penalty shall be paid in twelve installments, inclusive of interest, within three years of the date the Regional Administrator signs the Final Order accompanying this Consent Agreement (the “**calculation date**”).
3. 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. 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 2020. With applicable interest at the rate of one percent (1%) per annum on the outstanding principal balance, Respondent shall make twelve payments totaling One Thousand Five Hundred Thirty-Six Dollars and Twenty-One cents (\$1,536.21), inclusive of interest as follows:

The first installment of **FIFTY DOLLARS (\$50.00)** is to be received *on or before* ninety (90) calendar days from the calculation date (“due date #1”);

The second installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* one hundred eighty (180) calendar days from the calculation date (“due date #2”);

The third installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* two hundred seventy (270) calendar days from the calculation date (“due date #3”);

The fourth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* three hundred sixty (360) calendar days from the calculation date (“due date #4”);

The fifth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* four hundred fifty (450) calendar days from the calculation date (“due date #5”);

The sixth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* five hundred forty (540) calendar days from the calculation date (“due date #6”);

The seventh installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* six hundred thirty (630) calendar days from the calculation date (“due date #7”);

The eighth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* seven hundred twenty (720) calendar days from the calculation date (“due date #8”);

The ninth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* eight hundred ten (810) calendar days from the calculation date (“due date #9”);

The tenth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* nine hundred (900) calendar days from the calculation date (“due date #10”);

The eleventh installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* nine hundred ninety (990) calendar days from the calculation date (“due date #11”); and

The twelfth installment of **ONE HUNDRED THIRTY-FIVE DOLLARS AND ELEVEN CENTS (\$135.11)** is to be received *on or before* one thousand eighty (1080) calendar days from the calculation date (“due date #12”).

4. These twelve individual payments, in accordance with the terms and schedule of this Consent Agreement, shall each be made by cashier’s check, certified check, or electronically via Fedwire. Each payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes a payment by cashier’s check or certified check, then each such check shall be *received* at the address listed below in section a of this paragraph on or before its due date specified above. If Respondent makes a payment electronically via Fedwire, then each such Fedwire payment shall be *received* as described in section b of this paragraph on or before its due date specified in the preceding paragraph:

a. If payments are made by cashier’s check or by certified check, such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: ***In re Promethean Remodeling, L.L.C., Docket Number TSCA-02-2020-9174.*** If payments are made by either form of check, such payment shall be mailed to the following address:

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

b. Alternatively, if Respondent chooses to make payments electronically via Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment in accordance with this paragraph is being made:

- i. Amount of Payment;
- ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
- iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
- v. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
- vi. Name of Respondent: **Promethean Remodeling, LLC;**
- vii. Case docket number: **TSCA-02-2020-9174.**

5. 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.

6. If Respondent fails to make timely payment of any one of the required installments in accordance with the schedule set forth in paragraph 3, above, of this Consent Agreement, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, interest, administrative handling charges, and late penalty charges as described in paragraphs 7 - 9, below, of this Consent Agreement, in the event of any such failure or default and shall remit such payment in accordance with the payment instructions set forth in paragraph 4, above, of this Consent Agreement.

7. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date(s) specified above. 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)

8. Handling Charges: Pursuant to 31 U.S.C. § 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.

9. 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).

10. Respondent may, at any time after commencement of payment under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

11. The civil penalties provided for in this section (including any payment(s) for interest, late payment or handling charges that have become due) constitute a “penalty” within the meaning of 26 U.S.C. § 162(f) and do not constitute a deductible expenditure for purposes of federal or state law.

12. Promethean shall obtain RRP Firm Certification from EPA and initial Renovator Certification from an EPA-approved provider prior to conducting renovations on any pre-1978 housing. Upon receipt of the Firm certification and the renovator certification, Promethean shall provide a copy of each certificate to the Region 2 personnel listed in paragraph 22, below.

13. Respondent shall implement a Compliance Plan (Attachment 1 to this Consent Agreement and incorporated by reference herein) addressing the following broad categories of compliance with TSCA and the RRP regulations codified at 40 C.F.R. Part 745:

- a. Maintaining and Renewing EPA RRP Firm certification(s);
- b. Obtaining, Maintaining, and Renewing RRP certifications for individual renovators, which are issued by EPA-accredited training providers with a course completion certificate upon completion of the course;
- c. Training of Respondent employees who perform RRP work. Such training shall include lead-safe work practices of 40 C.F.R. § 745.85(a), and how to complete the forms and checklist included in the RRP Compliance Packet (Attachment 2 to this Consent Agreement and incorporated by reference herein), for each job performed by Respondent;
- d. Creation and retention of records of compliance;
- e. Compliance with lead-safe work practice standards for renovation projects;
- f. Compliance with post-renovation cleaning verification requirements; and
- g. Management of general contractor/subcontractor roles for RRP Rule projects.

Respondent further agrees to utilize the “RRP Compliance Packet” which consists of forms and checklists in conjunction with each renovation job in order to ensure proper Lead Safe Work Practices and recordkeeping. EPA has approved the Compliance Plan and RRP Compliance Packet.

14. Respondent shall implement the Compliance Plan and use the RRP Compliance Packet at all target housing and child-occupied facilities at which Respondent performs renovations subject to the provisions of 40 C.F.R. Part 745. Implementation of the Compliance Plan and use of the RRP Compliance Packet is intended as an adjunct to the requirements of 40 C.F.R. Part 745 and an aid to compliance therewith. Adherence to the provisions of the Compliance Plan and use of the RRP Compliance Packet and compliance with the provisions of this Consent Agreement with regard to the implementation of the Compliance Plan and use of the RRP Compliance Packet shall not be a substitute for compliance with the provisions of 40 C.F.R. Part 745 nor a defense to the failure to do so.

15. Respondent shall submit reports to EPA documenting its implementation of the Compliance Plan and use of the RRP Compliance Packet (hereinafter "CP Reports") in accordance with the following terms:

- a. Respondent shall prepare quarterly CP Reports to EPA for a period of one year commencing ninety (90) days from the date of signature of the Final Order. Each quarterly CP Report shall be submitted by Respondent and received by EPA no later than 15 days from the end of the preceding quarter.
- b. Each report shall summarize RRP activities performed and state the number of RRP renovations undertaken during the preceding quarter. The Report shall also include the following:
 - (1) The complete address of any renovation job conducted or underway at the time of the report and the areas renovated or to be renovated (e.g., apartment number(s) common area, exterior);
 - (2) The type of the renovation (e.g., residential home, multi-family apartment building, school building, conversion to housing);
 - (3) The specific renovation work performed;
 - (4) The original date of construction of the building(s);
 - (5) If a multi-family building, provide the number of floors and number of apartments per floor;
 - (6) Whether the Renovation Site was/will be occupied at the time of the renovation;
 - (7) The name, address and telephone number of the individual who was/will be the on-site certified renovator for the work and include a copy of his/her RRP training certificate;
 - (8) The name, address and telephone number of each subcontractor specifying the type of work each subcontractor performed or will perform at each renovation.
 - (9) The name, address, and telephone number of the building owner; and
 - (10) The scheduled dates of work, including start date and projected finish date.
- c. In the event that no work subject to the provisions of 40 C.F.R. Part 745 is undertaken in a given quarter, Respondent shall so state in the CP Report for that quarter.
- d. The CP Reports shall be sent to the following addresses:

Demian Ellis
 U.S. EPA – Region 2
 Lead Paint and Pesticides Compliance Section
 2890 Woodbridge Road – MS-225
 Edison, New Jersey 08837
ellis.demian@epa.gov

A copy of the cover page or transmittal e-mail only shall be sent to:

Jeannie M. Yu, Esq.
 Assistant Regional Counsel
 Office of Regional Counsel
 U.S. EPA – Region 2
 290 Broadway – 16th Floor
 New York, N.Y. 10007-1866
yu.jeannie@epa.gov

- e. Each CP Report shall contain the following certification signed by an appropriate corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.

16. Respondent shall be subject to stipulated penalties for the failure to (1) provide the required substantive content in the CP Report or (2) submit the required CP Reports in a timely manner as follows:

- a. 1 – 30 days delinquent - \$100 per day
- b. 30 – 60 days delinquent - \$200 per day
- c. Each day past 61 days - \$400 per day

All Stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of the stipulated penalties shall be made in the same manner as prescribed in paragraph 4 of this Consent Agreement, above, for payment of the civil penalty. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment but need only be paid upon demand.

17. Following receipt of the CP Report EPA will either:

- a. accept the CP Report(s); or

- b. reject the CP Report(s) and notify Respondent, in writing, of deficiencies in the CP Report, granting Respondent an additional thirty (30) days in which to correct any deficiencies and to resubmit the CP Report to EPA. If the identified deficiency(ies) in the CP Report is/are the result of a failure of substantive compliance, then EPA will provide Respondent with an opportunity to respond and/or correct the deficiencies. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 16 above.

18. If in the future EPA believes that any of the information in the documentation or CP Reports certified to, pursuant to paragraph 15(e), above, is inaccurate, EPA will advise Respondent of its belief and its basis for such and will afford Respondent an opportunity to respond to EPA. If EPA still believes the certification(s) is (are) mostly inaccurate, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 16, above for non-compliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.* or any other applicable law.

19. Respondent certifies under penalty of law that:

- a. Respondent is in compliance with all applicable requirements of TSCA and its implementing regulations regarding Residential Property Renovation found at 40 C.F.R. Part 745, Subpart E;
- b. the information and documentation it submitted to EPA on January 15, 2020 and June 24, 2020 regarding its finances is accurate, complete, and not misleading. EPA has relied on the accuracy of this submitted financial information during the negotiation of the settlement;
- c. COVID-19 negatively impacted its financial health and Respondent believes, to the best of its knowledge, that it has lost approximately 25% of its gross revenue from its lead-based paint activities by being unable to conduct any major renovation activities between the end of March 2020 and the date of execution of this consent agreement; and
- d. payment of the \$1,500 civil penalty in a single lumpsum payment would cause undue financial hardship because of the cash flow interruption and overall financial circumstances brought on by COVID-19.

20. Respondent acknowledges its awareness 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. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's financial condition and gross annual income is false or, in any material respect, inaccurate

21. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following address:

Jeff Toye
 115 Water Street
 Hackettstown, NJ 07840-2311
jeff@prometheanremodeling.com

Delivery of the fully executed documents to the email addresses in this paragraph shall constitute Respondent's receipt and acceptance of the CAFO. Unless the EPA contacts identified in paragraph 22, below, are subsequently advised otherwise by email, EPA shall direct any future communications to Respondent related to this proceeding, including any communications related to failure to make payment in accordance with the provisions of this CAFO to the email address listed in this paragraph.

22. Any responses, documentation and other communications submitted to EPA in connection with this Consent Agreement shall be sent to the following:

Demian Ellis
 Lead Enforcement Coordinator
 Pesticides and Toxic Substances Compliance Branch
 U.S. Environmental Protection Agency – Region 2
 2890 Woodbridge Avenue – MS 225
 Edison, New Jersey 08837
ellis.demian@epa.gov

Jeannie M. Yu
 Assistant Regional Counsel
 Environmental Protection Agency, Region 2
 290 Broadway, 16th floor
 New York, New York 10007-1866
yu.jeannie@epa.gov

23. This CAFO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

24. Full payment of the penalty amount set forth above in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve Respondent's liability for federal civil penalties for the facts and violations described in paragraph 12 of the "Findings of Fact and Conclusions of Law" section, above. 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.

25. Respondent hereby waives its right to seek or to obtain any hearing on the administrative claims set forth in the Findings of Fact and Conclusions of Law of this document, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order.

26. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: (a) 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.

27. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

28. 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.

29. Nothing in this CAFO is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any TSCA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

30. Respondent has read this Consent Agreement, understands its terms, finds its terms to be reasonable, and consents to its issuance and its terms.

31. Respondent agrees that all terms of settlement are set forth herein. If any requirement or obligation of this CAFO is held invalid or stayed by a court of competent jurisdiction, such action is not intended, and shall not, negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining requirements and provisions of this CAFO.

32. Each party shall bear its own costs and fees in connection with this proceeding.

33. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and further, that they are authorized to bind the party on whose behalf they are signing to comply with the applicable terms, conditions, and requirements set forth in this Consent Agreement.

In re Promethean Remodeling, L.L.C., Docket Number TSCA-02-2020-9174

RESPONDENT:

BY: Jeffrey Toyé
(Signature)

NAME: Jeffrey Toyé
(Please Print)

TITLE: Soul member LLC, owner

DATE: 09/28/2020

In re Promethean Remodeling, L.L.C., Docket Number TSCA-02-2020-9174

COMPLAINANT:

JOHN GORMAN Digitally signed by JOHN
GORMAN
Date: 2020.09.30 11:26:06 -04'00'

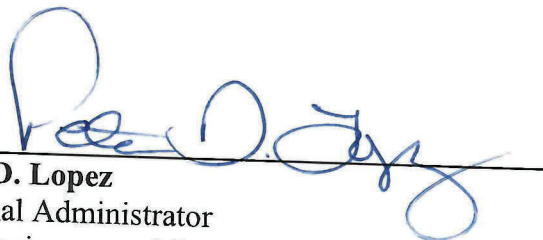
for Dore F. LaPosta, Director
Enforcement and Compliance
Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: _____

In re Promethean Remodeling, L.L.C., Docket Number TSCA-02-2020-9174

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Promethean Remodeling, L.L.C.*, bearing Docket Number TSCA-02-2020-9174. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed 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).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency – Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

DATED: 9/30/2020
New York, New York

In re Promethean Remodeling, L.L.C., Docket Number TSCA-02-2020-9174

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing docket number TSCA-02-2020-9174, in the following manner to the respective addressees below:

By Email:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
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Dated: October 1, 2020

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