

September 21, 2021 @ 9:56 am
USEPA – Region II
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
Dependable Home Improvements, Inc. : CONSENT AGREEMENT
AND
FINAL ORDER
Respondent : Docket No.
TSCA-02-2021-9266
Proceeding under Section 16(a) of :
the Toxic Substances Control Act :
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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).

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 2689 ... of this

title [Section 409 of TSCA, 15 U.S.C. § 2689] shall be liable to the United States for a civil penalty... .” EPA alleges that Dependable Home Improvements, Inc. (hereinafter “Respondent”) violated Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations on residential property renovation (“Renovation, Repair, and Painting Rule” or “RRP Rule”), 40 C.F.R. Part 745, Subpart E. 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 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 incorporated in the State of New York.
2. Respondent’s primary place of business is located at 1119 N. Broadway, N. Massapequa, NY 11758.
3. Respondent is engaged in the business of residential renovation.
4. Respondent is a “firm” as that term is defined at 40 C.F.R. § 745.83, with EPA Firm Certification No. NAT-F179824-1 valid from September 18, 2017 to October 02, 2022.
5. Respondent is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692, and set forth at 40 C.F.R. Part 745, including the Renovation, Repair and Painting Rule at 40 C.F.R. Part 745, Subpart E.

6. The RRP Rule was promulgated to ensure that renovation activities in target housing¹ 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.

7. 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.

8. On August 17, 2017, EPA notified Respondent that on September 12, 2017, representatives of the United States Environmental Protection Agency, Region 2 (“EPA”), would be conducting an inspection (the “Inspection”) of Respondent’s primary place of business. EPA conducted the Inspection on that date.

9. Based on the information provided by Respondent during and following the Inspection, EPA determined that Respondent had performed renovations subject to the RRP Rule in 2017 prior to receiving RRP firm certification on September 18, 2017.

10. EPA further determined that Respondent had violated the RRP Rule in the course of renovations performed prior to September 18, 2017 at the following addresses, all of which are target housing:

- 18 Wood Lane, Levittown, NY 11756
- 212 N. Pine Street, N. Massapequa, NY 11758
- 11 Kent Street, Farmingdale, NY 11735

¹ “Target Housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. § 2681(17) and 40 C.F.R. § 745.223.

- 14 Hampton Road, Massapequa, NY 11758
- 206 Pine Street, N. Massapequa, NY 11758

11. EPA further determined that at each of the above addresses, Respondent failed to comply with:

- a. 40 C.F.R. § 745.89(a): Failure of a firm that performs, offers, or claims to perform renovations for compensation to obtain initial certification from EPA, pursuant to 40 C.F.R. § 745.81(a)(2)(ii);
- b. 40 C.F.R. § 745.84(a)(1): Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1);
- c. 40 C.F.R. § 745.87(b): Failure to establish or maintain records, pursuant 40 C.F.R. § 745.87(b); and,
- d. 40 C.F.R. § 745.89(d)(2): Failure to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, pursuant to 40 C.F.R. § 745.89(d)(2).

12. 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.

13. Each of Respondent's 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).

14. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), a violator may be subject to civil penalties up to \$41,056 per violation per day for each violation committed after November 2, 2015, for which a penalty is assessed on or after December 23, 2020.

15. On April 20, 2021, and June 8, 2021, Respondent submitted to EPA its 2020, 2019, 2018 and 2017 tax returns in support of settlement.

16. On February 3, 2021 and February 4, 2021 Respondent submitted to EPA representations as to the absence of children residing at the premises noted in paragraph 10, above, upon which EPA relied.

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

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, as of the date of execution of this CA/FO, it is in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401–412, 15 U.S.C. §§ 2681–2692 and the implementing regulations codified at 40 C.F.R. Part 745.

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, either by cashier's or certified check or electronically by Fedwire or online payment, a civil penalty in the amount of **THIRTY-SEVEN THOUSAND ONE HUNDRED TWENTY DOLLARS (\$37,120)** plus accrued interest of \$92.80 (for a total amount of \$37,212.80) in accordance with the following schedule:

- a payment of \$18,560 shall be received by EPA *on or before* 30 days from the date of the Regional Judicial Officer's signature of the Final Order (due date #1); and
- a payment of \$18,652.80 shall be received by EPA *on or before* 180 days from the date of the Regional Judicial Officer's signature of the Final Order (due date #2).

5. Respondent shall make payment via one of the following payment transmittal methods:

- a. If Respondent chooses to pay by check, each check shall be made payable to "Treasurer of the United States of America" and shall be mailed by one of the following two methods:

STANDARD DELIVERY

**United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

**United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101**

The check(s) shall be identified with a notation thereon listing the following: In the Matter of Dependable Home Improvements, Inc., Docket No. TSCA-02-2021-9266.

b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

- 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: "**D68010727 Environmental Protection Agency**";
- 6) Name of Respondent: **Dependable Home Improvements, Inc.**; and,
- 7) Case Docket Number **TSCA-02-2021-9266**

c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email proof of payment to fitzpatrick.robert@epa.gov and Wise.Milton@epa.gov with ***In the Matter of Dependable Home Improvements, Inc., TSCA-02-2021-9266*** as the subject line.

6. Failure to pay the full amount 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.

7. If Respondent fails to make timely payment in accordance with the requirements set forth in Paragraphs 4 and 5 of this Consent Agreement, above, 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, if timely payment is not made on or before a due date Respondent shall also be liable for, and shall pay, the interest, handling charges, and late penalty charges set out in Paragraph 8, below, and shall remit such payment in accordance with the payment instructions in Paragraph 5 of this Consent Agreement, above.

8. If timely payment is not made on or before a due date, then 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.

a. Interest: 40 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.

b. Handling Charges: Pursuant to 31 U.S.C. Section 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.

c. 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).

9. The civil penalty provided for herein is a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal, state, or local law.

10. Respondent certifies under penalty of law that:

a. the information in its submissions on April 20, 2021, and June 8, 2021 regarding Respondent's financial condition and the representations made by Respondent on February 3, 2021 and February 4, 2021 are accurate, complete, and not misleading. EPA has relied on these submissions in the negotiation of this settlement.

11. Any responses, documentation, and communication submitted to EPA in connection with this Consent Agreement shall be sent via e-mail to fitzpatrick.robert@epa.gov and Howard.Carl@epa.gov. Unless these EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty) to Respondent at the following e-mail address:
gcoralloesq.1@gmail.com.

12. 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. Delivery of the fully executed documents to the email addressee in the preceding paragraph shall constitute Respondent's receipt and acceptance of the CA/FO.

13. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

14. Respondent agrees that all terms of settlement are set forth herein.

15. Respondent voluntarily 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. Full payment of the penalty shall only resolve Respondent's liability for federal civil penalties for the violations described in Paragraphs 9-13, in the above Findings of Fact and Conclusions of Law. 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.

16. Respondent voluntarily and knowingly consents to the issuance of the accompanying Final Order.

17. 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 regulations, 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.

18. Compliance with the requirements and provisions of this CA/FO 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.

19. 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.

20. 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 States to enforce the provisions of this Consent Agreement and Final Order.

21. Respondent waives any rights it may have to appeal this Consent Agreement and the accompanying Final Order.

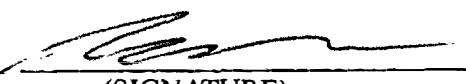
22. Each party hereto agrees to bear its own costs and fees in this matter.

23. 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.

Dependable Home Improvements, Inc.

RESPONDENT:

BY:


(SIGNATURE)

NAME: Steve Galando
(PLEASE PRINT)

TITLE: President

DATE: 9-15-21

COMPLAINANT:

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

DATE: _____

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 Dependable Home Improvements, Inc., Docket Number TSCA-02-2021-9266. 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.

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2

Date: _____

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing Docket Number TSCA-02-2021-9266, in the following manner to the respective addressees below:

Copy by e-mail:

Maples.Karen@epa.gov
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by e-Mail:

gcoralloesq.1@gmail.com
Gerald A. Corallo, Esq.
Corallo & Corallo
134 Ireland Place
Amityville, New York 11701

Dated: _____

New York, New York