

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

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In the Matter of:)
)
Robert W. Heh, Jr. Construction Company)
d/b/a Window Depot USA)
218 Alpha Drive)
Stroudsburg, PA 18360)
)
RESPONDENT)

Docket No.: TSCA-03-2015-0042

Proceeding Under Section 16(a) of the
Toxic Substances Control Act, 15 U.S.C.
Section 2615(a)

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Robert W. Heh, Jr., Construction Company, Inc., doing business as Window Depot USA (“Window Depot” or “Respondent”) pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, 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)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to Respondent’s alleged failure, during the performance of a renovation for compensation on certain pre-1978 housing, to comply with the Lead; Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth at 40 C.F.R. Part 745, Subpart E.
2. 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

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.

III. GENERAL PROVISIONS

4. 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.”
5. Except as provided in Paragraph 4 above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. 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.
7. 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.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. Pursuant to 40 C.F.R. § 745.83, the term “firm” means “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.”
12. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means “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].”

13. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “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.”
14. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a “firm” who performed a “renovation,” as those terms are defined at 40 C.F.R. § 745.83, at the following 3 properties: 6044 Running Valley Rd., Stroudsburg, PA 18360; 305 Bogart’s Way, Mt. Pocono, PA 18344; and 425 Main St., Hellertown, PA 18055, hereinafter referred to as “Renovation Properties.”
15. Each of the Renovation Properties were constructed prior to 1978 and are “target housing” as that term is defined in Paragraph 13 above.
16. Respondent entered into a three contracts with the individual owners of the Renovation Properties, for the purpose of performing a renovation for compensation pursuant to 40 C.F.R. § 745.82(a), as outlined below:

| COUNTS | RENOVATION & PROPERTY ADDRESS | DATE OF CONTRACT |
|---------|--|------------------|
| 2 and 5 | 6044 Running Valley Rd., Stroudsburg, PA | 09/29/2010 |
| 3 and 6 | 305 Bogart’s Way, Mt. Pocono, PA | 04/11/2011 |
| 4 and 7 | 425 Main St., Hellertown, PA | 08/05/2011 |

17. The renovations for compensation were not exempt from regulation under any of the exceptions set out at 40 C.F.R. § 745.82(a).
18. On September 28, 2011, Complainant conducted a records inspection at Respondent’s office located at Rte. 715 Plaza, Tannersville, PA 18372, to determine Respondent’s level of compliance with the RRP Rule in regards to certain renovation activities performed by Respondent in the aforementioned locations.

V. VIOLATIONS ALLEGED

Count 1

19. The allegations contained in Paragraphs 1 through 18 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
20. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in

target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a).

21. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.
22. At the time of the renovations at the Renovation Properties, Respondent had not applied to EPA for certification to perform renovations, and did not qualify for an exception identified in 40 C.F.R. § 745.82(a).
23. Under 40 C.F.R. § 745.81(a)(2)(ii), Respondent's failure to obtain EPA firm certification pursuant to 40 C.F.R. § 745.89 before performing renovations at the Renovation Properties, constitutes a violation of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts 2 – 4

24. The allegations contained in Paragraphs 1 through 23 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
25. Pursuant to 40 C.F.R. § 745.84(a)(1)(i), a firm performing a renovation must provide the owner of the unit with the Renovate Right pamphlet, and either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation.
26. At the time of the September 28, 2011 inspection, Respondent did not have the owner of the Renovation Properties' acknowledgment of receipt of the pamphlet or a certificate of mailing sent at least 7 days before the renovation.
27. Under 40 C.F.R. § 745.84(a)(1)(i), failure to either obtain the owner's written acknowledgement that the owner received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation, during each renovation at the Renovation Properties referred to in Paragraph 16, constitutes three separate violations of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 5 – 7

28. The allegations contained in Paragraphs 1 through 27 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
29. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart, 40 C.F.R. § 745, Subpart E, for a period of 3 years following completion of

the renovation.

30. Pursuant to 40 C.F.R. §745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
31. At the time of the September 28, 2011 inspection, Respondent had not retained records for the renovations performed at the Renovation Properties documenting that a certified renovator performed or directed the workers to perform the tasks required by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
32. Under 40 C.F.R. § 745.86, Respondent's failure to retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed or directed workers to perform tasks described by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b), during each renovation at the Renovation Properties referred to in Paragraph 16, constitutes three separate violations of 40 C.F.R. § 745.87(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

VI. CIVIL PENALTY

33. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Seven Thousand Dollars (\$7,000.00)**, which shall be paid in twelve (12) monthly installments with interest at the rate of one percent (1%) per annum on the outstanding principle balance in accordance with the following payment schedule:

| Payment | Principal | Interest | Payment Amount |
|----------------|-------------------|-----------------|-----------------------|
| 1 | \$583.37 | \$0.00 | \$583.37 |
| 2 | \$583.33 | \$10.70 | \$594.03 |
| 3 | \$583.33 | \$4.86 | \$588.19 |
| 4 | \$583.33 | \$4.37 | \$587.70 |
| 5 | \$583.33 | \$3.88 | \$587.21 |
| 6 | \$583.33 | \$3.40 | \$586.73 |
| 7 | \$583.33 | \$2.91 | \$586.24 |
| 8 | \$583.33 | \$2.43 | \$585.76 |
| 9 | \$583.33 | \$1.94 | \$585.27 |
| 10 | \$583.33 | \$1.45 | \$584.78 |
| 11 | \$583.33 | \$0.97 | \$584.30 |
| 12 | \$583.33 | \$0.48 | \$583.81 |
| Total: | \$7,000.00 | \$37.39 | \$7,037.39 |

34. The first payment of the civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a true and correct copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.
35. The Parties acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon financial information submitted to Complainant by Respondent. By his signature below, Respondent's representative certifies that the information submitted to EPA regarding its ability to pay and regarding any other matter at issues in this proceeding is accurate and not misleading. Respondent and its officers and directors are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any other matter herein at issue, are materially false, fictitious or fraudulent.
36. The Parties represent that the settlement terms are reasonable and are based upon EPA'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 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* ("LBP Consolidated ERPP"), dated August 2010, revised April 2013.

37. 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 Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2015-0042;
 - 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention PlazaSL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

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

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

38. Respondent may also pay the amount described in Paragraph 33 above, electronically or on-line as follows:

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

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

b. 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid, (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

d. Additional payment guidance is available at:

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

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

39. 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 the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
40. 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 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 account rate in accordance with 40 C.F.R. § 13.11(a).
41. The costs of the EPA's administrative handling of overdue debts will be 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.
42. A late penalty payment of six percent (6%) 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).
43. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty

specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

44. 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 IV (“Findings of Fact and Conclusions of Law”) 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

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

IX. CERTIFICATION OF COMPLIANCE

46. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is complying with applicable provisions of TSCA and 40 C.F.R. Part 745.

X. RESERVATION OF RIGHTS

47. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged against the Respondent in the Complaint. 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA 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

48. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent, and Respondent’s successors, agents and assigns.

XII. EFFECTIVE DATE

49. The effective date of this Consent Agreement and the accompanying Final Order (which

is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

50. 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.

XIV. EXECUTION

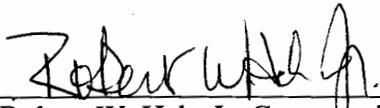
51. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent:

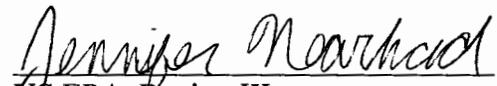
For Complainant:

Date:

Date: 2/10/15



Robert W. Heh, Jr. Construction Company
Robert Heh, President

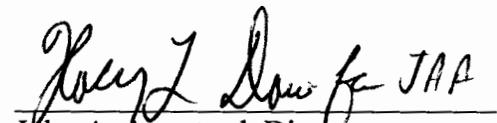


US EPA, Region III
Jennifer J. Nearhood, 3RC50
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date:

3/23/2015



John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Philadelphia, Pennsylvania 19103-2029

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Docket No.: TSCA-03-2015-0042

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Toxic Substances Control Act, 15 U.S.C.
Section 2615(a)

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail:

Rober Heh, Owner
Robert W. Heh, Jr. Construction Company
d/b/a Window Depot USA
218 Alpha Drive
Stroudsburg, PA 18360

3/26/2015
Date

Jennifer J. Nearhood
Jennifer J. Nearhood (3RC50)
Assistant Regional Counsel
U.S. EPA, Region III

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