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**** FILED ****

16AUG2019 - 01:51PM

U.S.EPA - Region 09

10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION 9

13 **In the Matter of:**

14 **Pacific Home Remodeling, Inc.,**

15 **Respondent.**

Docket No. TSCA-09-2019- 0045

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency ("EPA"), Region 9, and Pacific
18 Home Remodeling, Inc., ("Respondent") agree to settle this matter and consent to the entry of
19 this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and
20 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 **I. AUTHORITY, JURISDICTION AND PARTIES**

22 1. This is a civil administrative penalty action brought against Respondent pursuant to
23 Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation
24 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Section 402 of TSCA, 15
25 U.S.C. § 2682, and their implementing rules issued at 40 C.F.R. Part 745, Subpart E –
26 Residential Property Renovation ("Subpart E").
27

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1 2. Complainant is the Chief, Toxics Section, Enforcement & Compliance Assurance
2 Division, EPA, Region 9, who has been duly delegated the authority to bring and settle this
3 action under TSCA.

4 3. Respondent, a California corporation located in Los Angeles, California, is a home
5 improvement and remodeling contractor.

6
7 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

8 4. Subpart E applies to all renovations performed for compensation in target housing and
9 child-occupied facilities, unless the renovation qualifies for the exception involving a lead-free
10 determination identified at 40 C.F.R. § 745.82(a).

11 5. Pursuant to Section 402(c) of TSCA, 15 U.S.C. § 2682(c), Subpart E sets forth
12 requirements for certification of firms and individuals engaged in lead-based paint activities and
13 work practice standards for renovation, repair and painting activities in target housing.

14 6. No firm may perform, offer, or claim to perform renovations without certification from
15 EPA under §745.89 in target housing. 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

16 7. Firms performing renovations must ensure that a certified renovator is assigned to each
17 renovation performed by the firm and discharges all of the certified renovator responsibilities
18 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

19 8. Waste from renovation activities must be stored under containment to prevent release of
20 dust and debris out of the work area. *See* 40 C.F.R. § 745.85(a)(4)(i).

21 9. Firms performing renovations must retain documentation of compliance with the
22 requirements of § 745.85, including documentation that a certified renovator was assigned to the
23 project; that the certified renovator provided on-the-job training for workers used on the project;
24
25
26
27

1 that the certified renovator performed or directed workers who performed all of the work practice
2 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
3 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

4
5 10. "Target housing" means any housing constructed prior to 1978, except housing for the
6 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
7 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
8 U.S.C. § 2681.

9
10 11. "Renovation" means the modification of any existing structure, or portion thereof, that
11 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
12 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the
13 removal, modification or repair of painted surfaces or painted components (e.g., modification of
14 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
15 scraping, or other such activities that may generate paint dust)); the removal of building
16 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
17 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
18 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
19 term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.
20

21
22 12. "Painted surface" means a component surface covered in whole or in part with paint or
23 other surface coatings. 40 C.F.R. § 745.83.

24
25 13. "Renovator" means any individual who either performs or directs workers who perform
26 renovations. A certified renovator is a renovator who has successfully completed a renovator
27 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.

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1 14. "Person" means any natural or judicial person including any individual, corporation,
2 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
3 body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R.
4 § 745.83.
5

6 15. "Firm" means a company, partnership, corporation, sole proprietorship, or individual
7 doing business, association, or other business entity; a Federal, State, Tribal, or local government
8 agency; or a nonprofit organization. 40 C.F.R. § 745.83.
9

10 16. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
11 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
12 Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
13 \$39,873 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
14 after November 2, 2015, where penalties are assessed on or after February 6, 2019.
15

16 **III. ALLEGATIONS**

17 17. At all times relevant to this CAFO, Respondent was a "person," as that term is defined at
18 40 C.F.R. § 745.83.

19 18. At all times relevant to this CAFO, Respondent was a "firm," as that term is defined at 40
20 C.F.R. § 745.83.

21 19. At all times relevant to this CAFO, the properties at 9120 La Salle Avenue in Los
22 Angeles, California; 6780 Delta Avenue in Long Beach, California; and 11133 Dicky Street in
23 Whittier, California (collectively, "Target Housing Properties") were "target housing," as that
24 term is defined at Section 401 of TSCA, 15 U.S.C. § 2681.
25

26 20. Within the period of February 2016 to August 2016, Respondent replaced block frame
27

1 and/or wood frame windows (“Renovations”) at each of the Target Housing Properties.

2 21. Within the period of February 2016 to August 2016, each of the Renovations at each of
3 the Target Housing Properties was a “renovation,” as that term is defined at 40 C.F.R. § 745.83.
4

5 CLAIM 1

6 22. Paragraphs 1-21 of this CAFO are realleged and are incorporated herein by reference.

7 23. Respondent performed Renovations at each of the Target Housing Properties without
8 firm certification pursuant to 40 C.F.R. § 745.89.

9 24. With respect to the Renovations, Respondent did not qualify for the exception involving a
10 lead-free determination identified in 40 C.F.R. § 745.82(a).
11

12 25. Respondent's performance of the Renovations at each of the Target Housing Properties
13 without firm certification pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of
14 TSCA, 15 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).
15

16 CLAIMS 2-4

17 26. Paragraphs 1-25 of this CAFO are realleged and are incorporated herein by reference.

18 27. Respondent did not ensure that certified renovator(s) discharged all of the certified
19 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the
20 Target Housing Properties.

21 28. Respondent's failures to ensure that certified renovator(s) discharged all of the certified
22 renovator responsibilities identified in § 745.90 for the Renovations performed at each of the
23 Target Housing Properties constitute three violations of Section 409 of TSCA, 15 U.S.C. § 2689,
24 and 40 C.F.R. § 745.89(d)(2).
25

26 CLAIMS 5-7

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1 29. Paragraphs 1-28 of this CAFO are realleged and are incorporated herein by reference.

2 30. Neither Respondent nor its sub-contractor(s) contained waste from the Renovations at
3 each of the Target Housing Properties.

4 31. The failures of Respondent and its sub-contractor(s) to contain waste from the
5 Renovations at each of the Target Housing Properties constitute three violations of Section 409
6 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.85(a)(4)(i).

8 CLAIMS 8-19

9 32. Paragraphs 1-31 of this CAFO are realleged and are incorporated herein by reference.

10 33. With respect to the Renovations at the Target Housing Properties, Respondent did not
11 retain documentation that certified renovator(s) were assigned to the project; that certified
12 renovator(s) provided on-the-job training for workers used; that certified renovator(s) performed
13 or directed workers who performed all of the work practice tasks described in § 745.85(a); and
14 that certified renovator(s) performed the post-renovation cleaning verifications described in
15 § 745.85(b) for the Renovations performed at each of the Target Housing Properties.

16 34. Respondent's failures to retain documentation that certified renovator(s) were assigned to
17 the projects; that certified renovator(s) provided on-the-job training for workers used; that
18 certified renovator(s) performed or directed workers who performed all of the work practice
19 tasks described in § 745.85(a); and that certified renovator(s) performed the post-renovation
20 cleaning verification described in § 745.85(b) for the Renovations performed at each of the
21 Target Housing Properties constitute 12 violations of Section 409 of TSCA, 15 U.S.C. § 2689,
22 and 40 C.F.R. § 745.86(b)(6).

23 **IV. RESPONDENT'S ADMISSIONS**

1 35. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
2 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
3 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
4 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
5 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
6 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
7 Final Order contained in this CAFO.
8

9 **V. CIVIL ADMINISTRATIVE PENALTY**

10
11 36. Respondent agrees to the assessment of a penalty in the amount of FIVE THOUSAND
12 DOLLARS (\$5,000) as final settlement of the civil claims against Respondent arising under
13 TSCA as alleged in Section III of this CAFO.

14 37. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
15 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
16 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
17 as follows:
18

19 Regular Mail:
20 U.S. Environmental Protection Agency
21 Fines and Penalties
22 Cincinnati Finance Center
23 PO Box 979077
24 St. Louis, MO 63197-9000

25 Wire Transfers:
26 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
27 following information:
28 Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

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1 33 Liberty Street
2 New York, NY 10045
3 Field Tag 4200 of the Fedwire message should read "D 68010727
4 Environmental Protection Agency"

5 Overnight Mail:
6 U.S. Bank
7 1005 Convention Plaza
8 Mail Station SL-MO-C2GL
9 ATTN Box 979077
10 St. Louis, MO 63101

11 ACH (also known as REX or remittance express):
12 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
13 Account Number: 310006, Environmental Protection Agency
14 CTX Format Transaction Code 22 - checking
15 Physical location of US Treasury Facility
16 5700 Rivertech Court
17 Riverdale, MD 20737
18 Remittance Express (REX) 1-866-234-5681

19 On Line Payment:

20 This payment option can be accessed from the information below:
21 www.pay.gov

22 Enter "sfo1.1" in the search field
23 Open form and complete required fields

24 If clarification regarding a particular method of payment remittance is needed, contact the EPA
25 Cincinnati Finance Center at 513-487-2091.

26 Concurrently, a copy of the check or notification that the payment has been made by one of the
27 other methods listed above, including proof of the date payment was made, shall be sent with
28 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
29 following addressees:

30 Regional Hearing Clerk
31 Office of Regional Counsel (ORC-1)
32 U.S. Environmental Protection Agency, Region 9
33 75 Hawthorne Street
34 San Francisco, California 94105

35 Max Weintraub
36 Toxics Section (ENF-4)

37
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1 Enforcement and Compliance Assurance Division
2 U.S. Environmental Protection Agency, Region 9
3 75 Hawthorne Street
4 San Francisco, CA 94105

5 38. Payment of the above civil administrative penalty shall not be used by Respondent or any
6 other person as a tax deduction from Respondent's federal, state, or local taxes.

7 39. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
8 36 by the deadline specified in Paragraph 37, then Respondent shall pay to EPA a stipulated
9 penalty of \$100 per day in addition to the assessed penalty. Stipulated penalties shall accrue
10 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
11 become due and payable upon written request by EPA. In addition, failure to pay the civil
12 administrative penalty by the deadline specified in Paragraph 37 may lead to any or all of the
13 following actions:

14 a. The debt being referred to a credit reporting agency, a collection agency, or to the
15 Department of Justice for filing of a collection action in the appropriate United States District
16 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
17 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
18

19 b. The debt being collected by administrative offset (i.e., the withholding of money payable
20 by the United States to, or held by the United States for, a person to satisfy the debt the person
21 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
22 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
23

24 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
25 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
26 or funds. 40 C.F.R. § 13.17.
27

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1 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
2 penalties charges, and administrative costs will be assessed against the outstanding amount that
3 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
4 deadline specified in Paragraph 37. Interest will be assessed at an annual rate that is equal to the
5 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
6 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
7 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
8 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
9 Administrative costs for handling and collecting Respondent's overdue debt will be based on
10 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
11 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
12 Department of Justice, the Internal Revenue Service), that department or agency may
13 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
14 collecting Respondent's overdue debt.
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16
17

18 **VI. RESPONDENT'S CERTIFICATION**

19 40. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
20 federal regulations promulgated at Subpart E.
21

22 **VII. RETENTION OF RIGHTS**

23 41. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
24 for federal civil penalties for the violations and facts specifically alleged in Section III of this
25 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
26 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
27

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1 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
2 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
3 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
4 address any violation of this CAFO or any violation not specifically alleged in Section III of this
5 CAFO.
6

7 42. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
8 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
9 permits.
10

11 **VIII. ATTORNEYS' FEES AND COSTS**

12 43. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
13 proceeding.
14

15 **IX. EFFECTIVE DATE**

16 44. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
17 on the date that the final order contained in this CAFO, having been approved and issued by
18 either the Regional Judicial Officer or Regional Administrator, is filed.
19

20 **X. BINDING EFFECT**


21 45. The undersigned representative of Complainant and the undersigned representative of
22 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
23 of this CAFO and to bind the party he or she represents to this CAFO.
24

25 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its
26 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
27 and assigns.
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FOR RESPONDENT, PACIFIC HOME REMODELING, INC.

7/2/19
DATE


Name
Title
Pacific Home Remodeling, Inc.

FOR COMPLAINANT:

8/13/19
DATE


Douglas K. McDaniel
Chief, Toxics Branch
Enforcement & Compliance Assurance Division

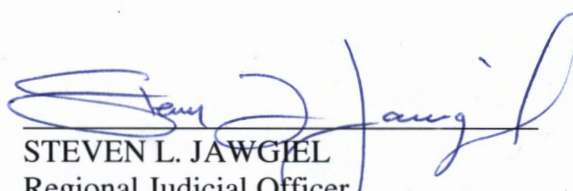
1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-⁰⁰⁶⁵) be

4 entered, and that Respondent shall pay a civil administrative penalty in the amount of FIVE
5 THOUSAND DOLLARS (\$5,000) and comply with the terms and conditions set forth in the
6 Consent Agreement. This Consent Agreement and Final Order shall become effective upon
7 filing.
8

9
10
11 08/16/19
12 DATE

13 
14 STEVEN L. JAWGIEL
15 Regional Judicial Officer
16 U.S. Environmental Protection Agency,
17 Region 9
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Certificate of Service

I hereby certify the attached Consent Agreement and Final Order was sent to Respondent by U.S. Certified Mail, Return Receipt Requested this 16 day of ~~July~~, 2019 to:

AUG.

Yoram Hakimi
Chief Executive Officer
Pacific Home Remodeling, Inc.
6242 Westchester Parkway, Suite 160
Los Angeles, CA 90045

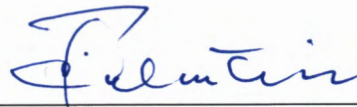
Certified Mail # 7015 3010 0000 3883 7356

I hereby certify a copy of the Consent Agreement and Final Order was delivered to the following Agency Attorney:

Brian Riedel
U.S. EPA, Region IX
75 Hawthorne Street (ORC-2-2)
San Francisco, CA 94105

8/16/19

Date



FOR : Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105