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30 JUNE 2020
U.S.EPA - REGION IX

7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. TSCA-09-2019-0070
12)
Fusion Windows and Doors Inc.,)
13) CONSENT AGREEMENT
AND FINAL ORDER
14 Respondent.) pursuant to 40 C.F.R. § 22.18(b)
15

16 I. CONSENT AGREEMENT

17 Complainant, the Manager of the Toxics Branch in the Enforcement and Compliance
18 Assurance Division, Environmental Protection Agency, Region IX, (“EPA”), and Respondent,
19 Fusion Windows and Doors Inc., agree to settle this civil administrative action brought under the
20 Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 *et seq.*, and consent to the entry of
21 this Consent Agreement and Final Order (the “CAFO”).

22 A. AUTHORITY

23 1. Complainant initiated this civil administrative proceeding for the assessment of a civil
24 penalty against Respondent under TSCA pursuant to Section 16(a), 15 U.S.C. § 2615(a), and the
25 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40
26 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing (“the Complaint”)
27 against Respondent on September 27, 2019.
28

1 2. The Complaint alleges that Respondent violated Section 409 of TSCA, 15 U.S.C. §
2 2689, by failing to comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and
3 their implementing federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

4 3. Complainant and Respondent have agreed to resolve this civil administrative
5 proceeding arising under TSCA by executing this CAFO.

6 B. RESPONDENT'S ADMISSIONS

7 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
8 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
9 Respondent; (ii) neither admits nor denies the specific factual allegations contained in the
10 Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment
11 of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest
12 the allegations contained in the Complaint; and (v) waives the right to appeal the proposed Final
13 Order contained in this CAFO.

14 C. CIVIL ADMINISTRATIVE PENALTY

15 5. In settlement of the violations specifically alleged in the Complaint, Respondent shall
16 pay a civil administrative penalty of TWELVE THOUSAND DOLLARS (\$12,000). Respondent
17 shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil
18 penalty shall be paid by remitting a certified or cashier's check, including the name and docket
19 number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid
20 by one of the other methods listed below) and sent as follows:

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

27 Wire Transfers:
28 Wire transfers must be sent directly to the Federal Reserve Bank in New
29 York City with the following information:
30 Federal Reserve Bank of New York
31 ABA = 021030004
32 Account = 68010727
33 SWIFT address = FRNYUS33
34 33 Liberty Street

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

3 Overnight Mail:

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

9 ACH (also known as REX or remittance express):

10 Automated Clearinghouse (ACH) for receiving U.S. currency
11 PNC Bank
12 808 17th Street, NW
13 Washington, DC 20074 ABA = 051036706
14 Transaction Code 22 – checking
15 Environmental Protection Agency
16 Account 310006
17 CTX Format

18 On Line Payment:

19 This payment option can be accessed from the information below:
20 www.pay.gov
21 Enter "SFO1.1" in the search field
22 Open form and complete required fields

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

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

28
29 Regional Hearing Clerk
30 Office of Regional Counsel (ORC-1)
31 U.S. Environmental Protection Agency, Region IX
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 Max Weintraub
35 Toxics Branch
36 Enforcement and Compliance Assurance Division (ENF-4)
37 U.S. Environmental Protection Agency, Region IX
38 75 Hawthorne Street
39 San Francisco, CA 94105

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41 6. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
42 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to

1 use such payment as a tax deduction.

2 7. If Respondent fails to pay the assessed civil administrative penalty of TWELVE
3 THOUSAND DOLLARS (\$12,000), as identified in Paragraph 5, by the deadline specified in that
4 Paragraph, then Respondent shall pay a stipulated penalty to EPA of \$500 per day in addition to
5 the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and
6 all accrued stipulated penalties are paid and shall become due and payable upon EPA's written
7 request. Failure to pay the civil administrative penalty specified in Paragraph 5 by the deadline
8 specified in that Paragraph may also lead to any or all of the following actions:

9 (1) EPA may refer the debt to a credit reporting agency, a collection
10 agency, or to the Department of Justice for filing of a collection action in the appropriate United
11 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
12 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
13 collection proceeding.

14 (2) The U.S. Government may collect the debt by administrative offset
15 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
16 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
17 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
18 C.F.R. §§ 13(C) and 13(H).

19 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
20 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
21 business with EPA or engaging in programs EPA sponsors or funds.

22 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
23 Government may assess interest, administrative handling charges, and nonpayment penalties
24 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
25 civil administrative penalty specified in Paragraph 5 by the deadline specified in that Paragraph.

26 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
27 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
28 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,

1 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
2 (30) days of the effective date of this CAFO.

3 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
4 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
5 based on either actual or average cost incurred (including both direct and indirect costs), for every
6 month in which any portion of the assessed penalty is more than thirty (30) days past due.

7 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
8 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may
9 be assessed on all debts more than ninety (90) days delinquent.

10 D. CERTIFICATION OF COMPLIANCE

11 8. In executing this CAFO, Respondent certifies that it is now fully in compliance with
12 the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

13 E. RETENTION OF RIGHTS

14 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
15 liabilities for federal civil penalties for the violations and facts specifically alleged in the
16 Complaint. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
17 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
18 ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA
19 specifically reserves any and all authorities, rights, and remedies available to it (including, but not
20 limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of
21 this CAFO or any violation not specifically alleged in the Complaint.

22 10. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
23 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
24 and permits.

25 F. ATTORNEYS' FEES AND COSTS

26 11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
27 proceeding.

1 G. EFFECTIVE DATE

2 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
3 effective on the date that the Final Order contained in this CAFO, having been approved and
4 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

5 H. BINDING EFFECT

6 13. The undersigned representative of Complainant and the undersigned representative of
7 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
8 of this CAFO and to bind the party he or she represents to this CAFO.

9 14. The provisions of this CAFO shall apply to and be binding upon Respondent and its
10 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
11 and assigns.

12
13
14 FOR RESPONDENT FUSION WINDOWS AND DOORS INC.:

15
16 06/09/2020
DATE

17 
TIGRAN POGHOSYAN
CEO
Fusion Windows and Doors Inc.

18
19 FOR COMPLAINANT EPA:

20
21 6/25/2020
DATE

22 **MATTHEW SALAZAR** Digitally signed by
MATTHEW SALAZAR
Date: 2020.06.25
11:08:32 -07'00'
MATT SALAZAR, P.E.
Manager, Toxics Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Fusion Windows and Doors Inc. having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0070) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TWELVE
6 THOUSAND DOLLARS (\$12,000), and comply with the terms and conditions set forth in the
7 Consent Agreement.

8 STEVEN
9 JAWGIEL

Digitally signed by STEVEN
JAWGIEL
Date: 2020.06.26 11:40:06
-07'00'

10 _____
11 DATE

12 STEVEN JAWGIEL
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I do hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Fusion Windows and Doors Inc.* (TSCA-09-2019-0070), has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Respondent, and Counsel for EPA, as indicated below:

COUNSEL FOR RESPONDENT

Jilbert Tahmazian, Esq.
TAHMAZIAN LAW FIRM PC
jilbert@jilbertlaw.com

COUNSEL FOR EPA

Edgar P. Coral, Esq.
U.S. EPA – REGION IX
coral.edgar@epa.gov

Date: _____

Steven
Armsey

Digitally signed
by Steven Armsey
Date: 2020.06.30
18:22:52 -07'00'

Steven Armsey
Regional Hearing Clerk
EPA, Region 9