

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

Ro Cher Enterprises, Inc. d/b/a Door and Window Warehouse Outlet, Inc.; Door and Window Warehouse, Co.; and/or Door and Window Superstore,

Respondent.

Docket Number: TSCA-05-2023-0004

RESPONDENT RO CHER ENTERPRISES, INC.'S ANSWER TO COMPLAINT

Pursuant to 40 C.F.R. § 22.15, Respondent Ro Cher Enterprises, Inc. (“Ro Cher”), by and through its undersigned counsel, files this Answer and responds to the specific allegations in the numbered Paragraphs in EPA’s Complaint and states:

- When Ro Cher says that something “speaks for itself,” it does not admit that the referenced material exists, is accurate, or is placed in the proper context.
- Ro Cher is not obligated to respond to the headings of the Complaint. The headings are reproduced here for ease of reference. Inclusion of the headings does not constitute an admission of the Complaint’s allegations or characterizations. Ro Cher denies all titles and subheadings in the Complaint.
- Anything not expressly admitted by Ro Cher is denied.

“I. Preliminary Statement and Introduction”

1. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 15 U.S.C. § 2615(a) speaks for itself.
2. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that the Complaint speaks for itself.

3. Ro Cher admits the allegations contained in Paragraph 3 of the Complaint except that, to Respondent's knowledge, Door and Window Warehouse Outlet, Co., is not an existing entity and is not affiliated with Respondent.

4. The allegations contained in Paragraph 4 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. Part 22 and the Complaint speak for themselves and otherwise denies the allegations in Paragraph 4 of the Complaint.

5. Ro Cher states that the Complaint speaks for itself.

“II. Statutory and Regulatory Background”

6–34. The allegations contained in Paragraphs 6 through 34 of the Complaint are legal conclusions to which no response is required or refer to statutes and regulations that speak for themselves. To the extent a response is required, Ro Cher otherwise denies the allegations contained in Paragraphs 6 through 34 of the Complaint.

“III. General and Factual Allegations”

35. Ro Cher repeats and restates its answers, denials, and defenses to Paragraphs 1 through 34 and incorporates each by reference as if fully set forth herein.

36. Ro Cher admits the allegations contained in Paragraph 36 of the Complaint.

37. The allegations in paragraph 37 contain legal conclusions to which no response is required. To the extent a response is required, Ro Cher denies the allegations contained in Paragraph 37.

38. The allegations in Paragraph 38 are uniquely within the knowledge of Complainant.

39. Ro Cher states that any Requests for Information speak for themselves.

40. Ro Cher can neither confirm nor deny the allegations in Paragraph 40 of the Complaint, which are uniquely within Complainant's knowledge.

41. Ro Cher denies the allegations in Paragraph 41.
42. Ro Cher states that it received an administrative subpoena dated April 7, 2021. The remainder of the allegations in Paragraph 42 are legal conclusions to which no response is required.
43. Ro Cher states that the administrative subpoena speaks for itself and otherwise denies the allegations in Paragraph 43.
44. Ro Cher admits the allegations in Paragraph 44.
45. Ro Cher admits that Respondent provided Complainant with documents on or about April 22, 2022.
46. Ro Cher admits the allegations in Paragraph 46.
47. Ro Cher states that each document provided in response to the administrative subpoena speaks for itself and otherwise denies the allegations in Paragraph 47.
48. Ro Cher denies the allegations in Paragraph 48.
49. Ro Cher denies the allegations in Paragraph 49.
50. The allegations in Paragraph 50 are legal conclusions to which no response is required and otherwise denies the allegations in Paragraph 50.
51. Ro Cher denies the allegations in Paragraph 51.
52. Upon information and belief, Ro Cher admits the allegations in Paragraph 52.
53. The allegations in Paragraph 53 are legal conclusions to which no response is required.
54. The allegations in Paragraph 54 are legal conclusions to which no response is required.
55. The allegations in Paragraph 55 are legal conclusions to which no response is required.
56. The allegations in Paragraph 56 are legal conclusions to which no response is required and otherwise denies the allegations in Paragraph 56.

57. The allegations in Paragraph 57 are legal conclusions to which no response is required and otherwise denies the allegations in Paragraph 57.

58. Ro Cher denies the allegations in Paragraph 58.

59. The allegations in Paragraph 59 are legal conclusions to which no response is required and otherwise denies the allegations in Paragraph 59.

60. The allegations in Paragraph 60 are legal conclusions to which no response is required.

61. The allegations in Paragraph 61 are uniquely within the knowledge of Complainant and the electronic mail sent by Complainant speaks for itself.

62. Ro Cher admits that its previous attorney, Keith Goldberg, received a letter entitled “TSCA Notice of Potential Violation and Opportunity to Confer Notice of Intent to File Administrative Complaint against Ro Cher Enterprises, Inc., Downers Grove, Illinois,” dated August 20, 2021, and states that that document speaks for itself.

“IV. Violations”

“Count I: Failure to Obtain EPA Firm Certification”

63. Ro Cher repeats and restates its answers, denials, and defenses to Paragraphs 1 through 62 and incorporates each by reference as if fully set forth herein.

64. The allegations in Paragraph 64 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. §§ 745.81(a)(2)(ii), 745.89, and 745.82(a) and (c) speak for themselves and otherwise denies the allegations in Paragraph 64 of the Complaint.

65. The allegations in Paragraph 65 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. §

745.89(a)(1) speaks for itself and otherwise denies the allegations in Paragraph 65 of the Complaint.

66. The allegations in Paragraph 66 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.89(b) speaks for itself and otherwise denies the allegations in Paragraph 66 of the Complaint.

67. The allegations in Paragraph 67 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.83 speaks for itself and otherwise denies the allegations in Paragraph 67 of the Complaint.

68. The allegations in Paragraph 68 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.83 speaks for itself and otherwise denies the allegations in Paragraph 68 of the Complaint.

69. The allegations in Paragraph 69 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher denies the allegations in Paragraph 69 of the Complaint.

70. The allegations in Paragraph 70 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 15 U.S.C. § 2681(17) speaks for itself and otherwise denies the allegations in Paragraph 70 of the Complaint.

71. The allegations in Paragraph 71 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.82(a) and (b) speak for themselves and otherwise denies the allegations in Paragraph 71 of the Complaint.

72. Paragraph 72 contains legal conclusions to which no response is required. Ro Cher admits that it was not EPA certified under 40 C.F.R. § 745.89(a) or re-certified under 40 C.F.R. §

745.89(b), which speak for themselves, at the purported times of the seven renovations alleged in Paragraph 48 and otherwise denies the allegations in Paragraph 72.

73. The allegations in Paragraph 73 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.89, 40 C.F.R. § 745.81, and 15 U.S.C. § 2689 speak for themselves and otherwise denies the allegations in Paragraph 73 of the Complaint.

“Counts 2 to 8: Failure to Obtain Written Acknowledgment From Owners of the Single-Family Dwellings”

74. Ro Cher repeats and restates its answers, denials, and defenses to Paragraphs 1 through 73 and incorporates each by reference as if fully set forth herein.

75. The allegations in Paragraph 75 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.84 speaks for itself and otherwise denies the allegations in Paragraph 75 of the Complaint.

76. Ro Cher denies the allegations in Paragraph 76 of the Complaint.

77. The allegations in Paragraph 77 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 15 U.S.C. § 2681(17) speaks for itself and otherwise denies the allegations in Paragraph 77 of the Complaint.

78. The allegations in Paragraph 78 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 15 U.S.C. § 2681(14) speaks for itself and otherwise denies the allegations in Paragraph 78 of the Complaint.

79. Ro Cher denies the allegations in Paragraph 79.

80. Ro Cher denies the allegations in Paragraph 80.

81. The allegations in Paragraph 81 are legal conclusions to which no response is required. To the extent a response is required, Ro Cher denies the allegations in Paragraph 81.

82. The allegations in Paragraph 82 are legal conclusions to which no response is required. To the extent a response is required, Ro Cher denies the allegations in Paragraph 82.

83. The allegations in Paragraph 83 are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.84 and 15 U.S.C. § 2689 speak for themselves. Ro Cher otherwise denies the allegations in Paragraph 83.

84. The allegations in Paragraph 84 are legal conclusions to which no response is required. To the extent a response is required, Ro Cher states that 40 C.F.R. § 745.84 and 15 U.S.C. § 2689 speak for themselves. Ro Cher otherwise denies the allegations in Paragraph 84.

“V. Proposed Penalty”

85–87. The statutes and regulations referenced in Paragraphs 85 to 87 speak for themselves. To the extent a response is required, Ro Cher denies the allegations in Paragraphs 85 to 87.

88. Ro Cher denies that Complainant is entitled to the penalty requested in Paragraph 88. Ro Cher further denies all allegations contained in the Complaint not specifically admitted herein.

“VI. Rules Governing This Proceeding”

89. The allegations in Paragraph 89 are legal conclusions to which no response is required.

“VII. Answer and Opportunity to Request a Hearing”

90–94. Paragraphs 90 to 94 (misnumbered in Complaint as Paragraphs 90, 91, 92, 89, 90) contain legal conclusions to which no response is required.

“VIII. Filing and Service of Documents”

95–99. Paragraphs 95 to 99 (misnumbered in the Complaint as Paragraphs 91 to 95) contain filing and service instructions to which no response is required.

“IX. Penalty Payment”

100–101. Paragraphs 100 to 101 (misnumbered in the Complaint as Paragraphs 96 to 97) contain payment instructions to which no response is required.

“X. Settlement Conference”

102–103. Paragraphs 102 to 103 (misnumbered in the Complaint as Paragraphs 98 to 99) contain instructions for requesting a settlement conference to which no response is required.

“XI. Continuing Obligation to Comply”

104. Paragraph 104 (misnumbered in the Complaint as Paragraph 100) contains legal conclusions to which no response is required.

“XII. Consent Agreement and Final Order”

105. Paragraph 105 (misnumbered in the Complaint as Paragraph 101) contains legal conclusions to which no response is required.

ADDITIONAL DEFENSES

By asserting the matters set forth below, Ro Cher does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted, or upon which relief can be granted against Ro Cher.

SECOND ADDITIONAL DEFENSE

The alleged violations were caused by the acts or omissions of third-persons or entities over which Ro Cher had limited or no control.

THIRD ADDITIONAL DEFENSE

The Complaint may be barred by the doctrine of estoppel, waiver, and/or laches.

FOURTH ADDITIONAL DEFENSE

Ro Cher reserves the right to amend this Answer to add additional defenses if they become apparent from further discovery.

FIFTH ADDITIONAL DEFENSE

The Administrative Law Judge presiding over this proceeding was not properly appointed under the Appointments Clause of the U.S. Constitution.

SIXTH ADDITIONAL DEFENSE

The Environmental Appeals Board members to which an Order in this proceeding would be appealed were not properly appointed under the Appointments Clause of the U.S. Constitution.

SEVENTH ADDITIONAL DEFENSE

The EPA is not vested with the judicial power of the United States, and this proceeding therefore violates Article III of the U.S. Constitution.

EIGHTH ADDITIONAL DEFENSE

This proceeding violates Ro Cher's due process rights under the Fifth Amendment of the U.S. Constitution.

NINTH ADDITIONAL DEFENSE

This proceeding violates Ro Cher's right to a jury trial under the Seventh Amendment of the U.S. Constitution.

TENTH ADDITIONAL DEFENSE

Complainant seeks an excessive fine in violation of the Eighth Amendment of the U.S. Constitution.

WHEREFORE, Respondent, Ro Cher, requests the entry of an Order:

- A. Dismissing this case;

- B. Awarding to it its costs and expenses, including attorney's fees; and
- C. Granting it such other and further relief as may be justified.

REQUEST FOR A HEARING

Pursuant to 40 C.F.R. 22.15(c), Respondent Ro Cher requests a hearing in this case if it is not dismissed.

DATED: November 22, 2023.

Respectfully submitted,

s/ Molly E. Nixon

MOLLY E. NIXON
New York Bar No. 5023940
Pacific Legal Foundation
3100 Clarendon Boulevard, Suite 1000
Arlington, VA 22201
202.888.6881
mnixon@pacificlegal.org

OLIVER J. DUNFORD
Florida Bar No. 1017791
Pacific Legal Foundation
4440 PGA Boulevard, Suite 307
Palm Beach Gardens, FL 33410
916.503.9060
odunford@pacificlegal.org

*Attorneys for Respondent
Ro Cher Enterprise, Inc.*

In the Matter of Ro Cher Enterprises, Inc., d/b/a Door and Window Warehouse Outlet, Inc.; Door and Window Warehouse, Co.; and/or Door and Window Superstore, Respondent.
Docket No. TSCA-05-2023-0004

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, the foregoing document was sent to the following parties in the manner indicated below.

s/ Molly E. Nixon _____
MOLLY E. NIXON
Attorney for Respondent

Copy by OALJ E-Filing System to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:

NORA WELLS
ANDREW FUTERMAN
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Mail Code C-14J
Chicago, IL 60604
Email: wells.nora@epa.gov
Email: futerman.andrew@epa.gov
Counsel for Complainant