

RECEIVED

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

2013 SEP 26 PM 2:25
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

**The Home Hero, LLC
306 Fulton St.
Philadelphia, PA 19147**

Respondent

Docket No. TSCA-03-2013-0149

CONSENT AGREEMENT

**Proceeding under Sections 16(a) and 409
of the Toxic Substances Control Act, 15
U.S.C. Section 2615(a) and 2689**

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA") and The Home Hero, LLC ("Respondent"), pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a); the federal regulations set forth at 40 C.F.R. Part 745, Subpart E; 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

1. The violations cited herein pertain to the Respondent's alleged failure to comply with the Renovation, Repair, and Painting ("RRP") rule, set forth at 40 C.F.R. Part 745, Subpart E, promulgated under Sections 402 and 407 of TSCA, 15 U.S.C. §§ 2682(a)(1), 2682(c)(1), and 2687.
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 and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; 40 C.F.R. Part 745, Subpart E; 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 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the 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 following Findings of Fact and Conclusions of Law.
11. Under the RRP rule, 40 C.F.R. Part 745, Subpart E, each firm that performs, for compensation, a renovation of target housing or a child-occupied facility must: 1) provide the owner of the unit with the EPA pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, 40 C.F.R. § 745.84(a)(1); 2) retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. § 745.85 for a period of 3

years following completion of the renovation as required by 40 C.F.R. § 745.86(b)(6); and 3) with exceptions not relevant to these proceedings, obtain EPA certification to perform renovations, 40 C.F.R. § 745.81(a)(2)(ii).

12. 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.”
13. 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.
14. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, 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.”
15. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).
16. 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 716 S. 11th Street, Unit #300, Philadelphia, PA 19147.
17. The property referred to above was constructed prior to 1978 and is “target housing” as that term is defined at 40 C.F.R. § 745.103.
18. Respondent entered into one contract with the owner of the property for the purpose of performing a “renovation for compensation” pursuant to 40 C.F.R. § 745.82(a).
19. The above target housing renovation performed for compensation did not involve a renovation in target housing or child-occupied facility in which:
 - (1) “a written determination ha[d] been made by an inspector or risk assessor . . . 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” as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) “a certified renovator, using an EPA recognized test kit . . . has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm²” as provided at 40 C.F.R. § 745.82(a)(2); or

contain lead equal to or in excess of 1.0 milligrams/per square centimeter” as provided at 40 C.F.R. § 745.82(a)(1);

- (2) “a certified renovator, using an EPA recognized test kit . . . has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm²” as provided at 40 C.F.R. § 745.82(a)(2); or
 - (3) “a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm²” as provided at 40 C.F.R. § 745.82(a)(3).
20. On November 30, 2011, Complainant conducted an inspection at Respondent’s office located at 306 Fulton St., Philadelphia, PA 19147, to determine Respondent’s level of compliance with the RRP Rule.

V. VIOLATIONS

COUNT ONE

21. The allegations contained in Paragraphs 1 through 20 of this Consent Agreement are incorporated by reference as though fully set forth herein.
22. In September 2010, Respondent performed a “renovation for compensation” at 716 S. 11th Street, Unit #300, Philadelphia, PA 19147.
23. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations for compensation must provide the owner of the building with the EPA pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing.
24. At the November 30, 2011 inspection, Respondent admitted that he does not provide *Renovate Right* to the owners of target housing, including the owner of 716 S. 11th St., Unit #300.
25. Pursuant to 40 C.F.R. § 745.87(a), Respondent’s failure to provide the owner of 716 S. 11th St., Unit #300 with *Renovate Right* prior to beginning renovation activities constitutes a violation of 40 C.F.R. § 745.84(a)(1)(i) and Section 409 of TSCA, 15 U.S.C. § 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

COUNT TWO

26. The allegations contained in Paragraphs 1 through 25 of this Consent Agreement are incorporated by reference as though fully set forth herein.
27. 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 provided on-the-job training for workers used on the project and documentation that a certified renovator performed or directed workers to perform tasks as described by 40 C.F.R. § 745.85(a).
28. At the time of the November 30, 2011 inspection, Respondent failed to provide and/or retain records for the 716 S. 11th St., Unit #300 renovation documenting that a certified renovator provided on-the-job training for workers.
29. At the time of the November 30, 2011 inspection, Respondent failed to provide and/or retain records for the 716 S. 11th St., Unit #300 renovation documenting that a certified renovator performed or directed the workers to perform the tasks required by 40 C.F.R. § 745.85(a).
30. Pursuant to 40 C.F.R. § 745.87(b), Respondent's failure to provide and/or retain records documenting that a certified renovator provided on-the-job training for project workers and that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) constitutes a violation of 40 C.F.R. § 745.86(b)(6) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

COUNT THREE

31. The allegations contained in Paragraphs 1 through 30 of this Consent Agreement are incorporated by reference as though fully set forth herein.
32. 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 the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
33. At the time of the November 30, 2011 inspection, Respondent failed to provide and/or retain records for the 716 S. 11th St., Unit #300 renovation documenting that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).
34. Pursuant to 40 C.F.R. § 745.87(b), Respondent's failure to provide and/or retain records documenting that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) constitutes a violation of 40 C.F.R.

37. At the time of the November 30, 2011 inspection, Respondent had not applied for or obtained EPA certification.
38. At the time of the September 2010 renovation at 716 S. 11th St., Unit #300, Respondent had not applied for or obtained EPA certification.
39. Pursuant to 40 C.F.R. § 745.87(a), Respondent's failure to apply for or obtain EPA certification before performing a renovation at 716 S. 11th St., Unit #300 was in violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. 2689, which subjects Respondent to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

VI. CIVIL PENALTY

40. 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 one thousand one hundred twenty-seven dollars (\$1,127.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO fully executed by all parties, subject to Paragraph 42 below.
41. The aforesaid settlement amount is based upon Complainant'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 the 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 *Lead-Based Paint Consolidated Enforcement Response and Penalty Policy* and 40 C.F.R. Part 19.
42. The civil penalty of one thousand one hundred twenty-seven dollars (\$1,127.00) set forth in paragraph 40 above, may be paid in nine (9) monthly installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the schedule below. The first payment shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent. Following Payment 1, each subsequent payment shall be due and payable thirty (30) days from the date of the previously submitted payment.

42. The civil penalty of one thousand one hundred twenty-seven dollars (\$1,127.00) set forth in paragraph 40 above, may be paid in nine (9) monthly installments with interest at the rate of one percent (1%) per annum on the outstanding principal balance in accordance with the schedule below. The first payment shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Payment	Interest	Principal	Payment Amount
1	\$0.00	\$125.75	\$125.75
2	\$1.78	\$123.97	\$125.75
3	\$0.74	\$125.01	\$125.75
4	\$0.65	\$125.10	\$125.75
5	\$0.53	\$125.22	\$125.75
6	\$0.41	\$125.34	\$125.75
7	\$0.32	\$125.43	\$125.75
8	\$0.21	\$125.54	\$125.75
9	\$0.11	\$125.64	\$125.75
Total:	\$4.75	\$1,127.00	\$1,131.75

Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of one thousand one hundred twenty-seven dollars (\$1,127.00), and total interest payments in the amount of four dollars and seventy-five cents (\$4.75).

43. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 42, above, 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, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 47, 48, and 49, below, in the event of any such failure or default.
44. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth in Paragraph 42, above, Respondent may pay the entire civil penalty of one thousand one hundred twenty-seven (\$1,127.00) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
45. Payment of the civil penalty amount shall be made by cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2013-0149;

- 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

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

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

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

- g. 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 No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

i. Additional payment guidance is available at:

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

j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 40 shall be sent simultaneously to:

Dominique Freyre
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

46. 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 CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

47. 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 the 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 rate in accordance with 40 C.F.R. §13.11(a).
48. The costs of EPA's administrative handling of overdue debts is 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.
49. A penalty charge 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).
50. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

51. 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 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

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

IX. CERTIFICATION OF COMPLIANCE

53. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that it currently in compliance with the provisions of TSCA, the RRP Rule, and 40 C.F.R. Part 745, Subpart E.

X. RESERVATION OF RIGHTS

54. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged herein. 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. Further, EPA reserves any rights and remedies available to it under TSCA, the RRP Rule, the regulations promulgated thereunder, 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

55. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's officers and directors (in their official capacity), successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XII. EFFECTIVE DATE


56. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

57. 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.

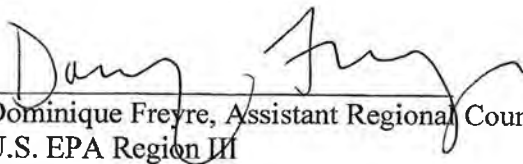
For Respondent:

9/6/13
Date


Peter Rose, Owner
The Home Hero, LLC

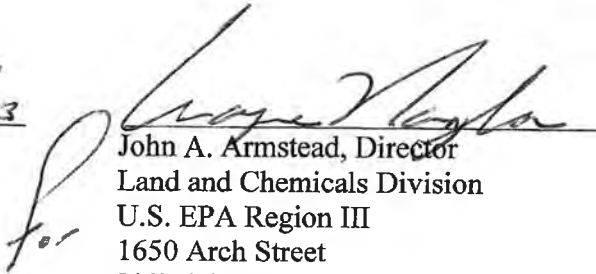
For Complainant:

9/11/13
Date


Dominique Freyre, Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

9/20/13
Date


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2013 SEP 26 PM 2: 26

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Philadelphia, PA 19103-2029 REGIONAL HEARING CLERK
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In the Matter of:

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306 Fulton St.
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Respondent

Docket No. TSCA-03-2013-0149

CONSENT AGREEMENT

Proceeding under Sections 16(a) and 409
of the Toxic Substances Control Act, 15
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FINAL ORDER

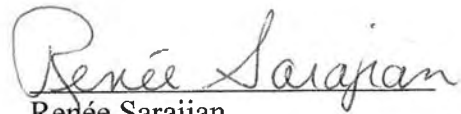
The Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III and Respondent, The Home Hero, LLC, have executed a document entitled, "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the RRP Rule, 40 C.F.R. Part 745, Subpart E, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **One Thousand One Hundred Twenty-Seven (\$1,127.00)** in accordance with the payment provisions set forth in the attached Consent Agreement.

In the Matter of: The Home Hero, LLC, Docket No. TSCA-03-2013-0149

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the EPA Regional Hearing Clerk.

Date: 9/26/13



Renée Sarajian
Regional Judicial Officer
U.S. EPA - Region III