

1
2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION IX
5 75 HAWTHORNE STREET
6 SAN FRANCISCO, CA 94105

**** FILED ****
11MAR2016 - 11:45AM
U.S.EPA - Region 09

6 In the Matter of:)
7 GD Friend, Inc. dba Everlast) Docket No. TSCA-09-2016-0006
8 Home Energy Solutions,) CONSENT AGREEMENT
9 Respondent.) AND FINAL ORDER
PURSUANT TO 40 C.F.R.
§§ 22.13 and 22.18

10 I. CONSENT AGREEMENT

11 The United States Environmental Protection Agency, Region IX
12 ("EPA") and GD Friend, Inc. dba Everlast Home Energy Solutions
13 ("Respondent") agree to settle this matter and consent to the
14 entry of this Consent Agreement and Final Order ("CAFO"), which
15 simultaneously initiates and concludes this matter in accordance
16 with 40 C.F.R. §§ 22.13(b) and 22.18(b).

17 A. AUTHORITY AND PARTIES

18 1. This is a civil administrative penalty action initiated
19 against Respondent pursuant to Section 16(a) of the Toxic
20 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for
21 violation of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to
22 comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and
23 2686, and their implementing federal regulations promulgated at
24 40 C.F.R. Part 745, Subpart E.

25 2. Complainant is the Director of the Enforcement Division,
26 EPA Region IX, who has been duly delegated the authority to bring
27 this action and to sign a consent agreement settling this action.

28 3. Respondent is a California corporation doing business at

1 3164 E. La Palma, Suite B in Anaheim, California.

2 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

3 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b),
4 40 C.F.R. Part 745, Subpart E requires a person who performs for
5 compensation a renovation of target housing and child-occupied
6 facilities to provide a lead hazard information pamphlet to the
7 owner and occupant before beginning the renovation.

8 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§
9 2682(a) and (c), 40 C.F.R. Part 745, Subpart E provides
10 requirements for certification of individuals and firms engaged
11 in lead-based paint activities and work practice standards for
12 renovation, repair, and painting activities in target housing and
13 child-occupied facilities.

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

19 7. "Person" means any natural or judicial person including
20 any individual, corporation, partnership, or association; any
21 Indian Tribe, State, or political subdivision thereof; any
22 interstate body; and any department, agency, or instrumentality
23 of the Federal Government. 40 C.F.R. § 745.83.

24 8. "Firm" means a company, partnership, corporation, sole
25 proprietorship, or individual doing business, association, or
26 other business entity; a Federal, State, Tribal, or local
27

1 government agency; or a nonprofit organization. 40 C.F.R. §
2 745.83.

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

19 10. "Painted surface" means a component surface covered in
20 whole or in part with paint or other surface coatings. 40 C.F.R.
21 § 745.83.

22 11. "Component or building component" means specific design
23 or structural elements or fixtures of a building or residential
24 dwelling that are distinguished from each other by form,
25 function, and location. These include, but are not limited to
26 interior components such as...windows and trim (including sashes,
27

1 window heads, jambs, sills or stools and troughs)...and exterior
2 components such as...windowsills or stools and troughs, casings,
3 sashes and wells. 40 C.F.R. § 745.83.

4 12. "Renovator" means any individual who either performs or
5 directs workers who perform renovations. A certified renovator
6 is a renovator who has successfully completed a renovator course
7 accredited by EPA or an EPA-authorized State or Tribal program.
8 40 C.F.R. § 745.83.

9 13. "Pamphlet" means the EPA pamphlet titled Renovate
10 Right: Important Lead Hazard Information for Families, Child Care
11 Providers and Schools developed under Section 406(a) of TSCA for
12 use in complying with Section 406(b) of TSCA, or any State or
13 Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326
14 that is developed for the same purpose. 40 C.F.R. § 745.83.

15 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the
16 Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R.
17 Part 19, which implements the Federal Civil Penalties Inflation
18 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize
19 civil penalties not to exceed \$37,500 per day for each violation
20 of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after
21 January 12, 2009.

22 C. ALLEGATIONS

23 15. Respondent is a "person," as that term is defined at 40
24 C.F.R. § 745.83.

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

1 17. In or around February and March 2014, Respondent
2 performed "renovations," as that term is defined at 40 C.F.R. §
3 745.83, for compensation at residential properties located at
4 1428 E. Burton Street in Anaheim, California and 3018 N. White
5 Street in La Verne, California.

6 18. At all times relevant to this CAFO, the residential
7 properties located at 1428 E. Burton Street in Anaheim,
8 California and 3018 N. White Street in La Verne, California were
9 "target housing," as that term is defined at 40 C.F.R. § 745.83.

10 19. Firms that perform renovations for compensation must
11 apply to EPA for certification to perform renovations. 40 C.F.R.
12 § 745.89(a).

13 20. On or after April 22, 2010, no firm may perform a
14 renovation without certification from EPA under 40 C.F.R. §
15 745.89(a) in target housing unless the renovation is performed in
16 target housing that has been determined to be lead-free pursuant
17 to 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(2)(ii).

18 21. At all times relevant to this CAFO, Respondent did not
19 have a certification from EPA to perform the renovations for
20 compensation at target housing located at 1428 E. Burton Street
21 in Anaheim, California and 3018 N. White Street in La Verne,
22 California.

23 22. At all times relevant to this CAFO, the target housing
24 located at 1428 E. Burton Street in Anaheim, California and 3018
25 N. White Street in La Verne, California had not been determined
26 to be lead-free pursuant to 40 C.F.R. § 745.82(a).

1 23. Respondent's performance of renovations for
2 compensation at target housing located at 1428 E. Burton Street
3 in Anaheim, California and 3018 N. White Street in La Verne,
4 California without certification from EPA under 40 C.F.R. §
5 745.89(a) constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii)
6 and Section 409 of TSCA, 15 U.S.C. § 2689.

7 24. No more than 60 days before beginning renovation
8 activities in any residential dwelling unit of target housing,
9 the firm performing the renovation must provide the owner of the
10 unit with the "pamphlet," as that term is defined at 40 C.F.R. §
11 748.83, and either obtain from the owner a written acknowledgment
12 that the owner has received the "pamphlet" or obtain a
13 certificate of mailing at least 7 days prior to the renovation.
14 40 C.F.R. § 745.84(a)(1).

15 25. Respondent did not provide the owners with the
16 "pamphlet" before beginning renovation activities at 1428 E.
17 Burton Street in Anaheim, California and 3018 N. White Street in
18 La Verne, California.

19 26. Respondent's failures to provide the owners with the
20 "pamphlet" before beginning renovation activities at 1428 E.
21 Burton Street in Anaheim, California and 3018 N. White Street in
22 La Verne, California constitute two (2) violations of 40 C.F.R. §
23 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

24 27. Firms performing renovations must retain documentation
25 of compliance with the requirements of § 745.85, including
26 documentation that a certified renovator provided on-the-job
27

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

6 29. Respondent did not retain documentation that a
7 certified renovator provided on-the-job training for workers
8 used; that a certified renovator performed or directed workers
9 who performed all of the work practice tasks described in §
10 745.85(a); and that a certified renovator performed the post-
11 renovation cleaning verification described in § 745.85(b) for the
12 renovations performed at 1428 E. Burton Street in Anaheim,
13 California and 3018 N. White Street in La Verne, California.

14 30. Respondent's failures to retain documentation that a
15 certified renovator provided on-the-job training for workers
16 used; that a certified renovator performed or directed workers
17 who performed all of the work practice tasks described in §
18 745.85(a); and that a certified renovator performed the post-
19 renovation cleaning verification described in § 745.85(b) for the
20 renovations performed at 1428 E. Burton Street in Anaheim,
21 California and 3018 N. White Street in La Verne, California
22 constitute six (6) violations of 40 C.F.R. § 745.86(b)(6) and
23 Section 409 of TSCA, 15 U.S.C. § 2689.

24 31. Firms performing renovations must ensure that a
25 certified renovator is assigned to each renovation performed by
26 the firm and discharges all of the certified renovator
27

1 responsibilities identified in § 745.90. 40 C.F.R. §
2 745.89(d)(2).

3 32. A certified renovator must prepare the records required
4 by § 745.86(b)(1)(ii) and (6). 40 C.F.R. § 745.90(b)(8).

5 33. Respondent did not have a certified renovator that
6 prepared the records required by § 745.86(b)(6) for the
7 renovations performed at 1428 E. Burton Street in Anaheim,
8 California and 3018 N. White Street in La Verne, California.

9 34. Respondent did not ensure that a certified renovator
10 discharged all of the certified renovator responsibilities
11 identified in § 745.90 for the renovations performed at 1428 E.
12 Burton Street in Anaheim, California and 3018 N. White Street in
13 La Verne, California.

14 35. Respondent's failures to ensure that a certified
15 renovator discharged all of the certified renovator
16 responsibilities identified in § 745.90 for the renovations
17 performed at 1428 E. Burton Street in Anaheim, California and
18 3018 N. White Street in La Verne, California constitute two (2)
19 violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA,
20 15 U.S.C. § 2689.

21 D. RESPONDENT'S ADMISSIONS

22 36. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
23 purpose of this proceeding, Respondent (i) admits that EPA has
24 jurisdiction over the subject matter of this CAFO and over
25 Respondent; (ii) neither admits nor denies the specific factual
26 allegations contained in Section I.C of this CAFO; (iii) consents
27

1 to any and all conditions specified in this CAFO and to the
2 assessment of the civil administrative penalty under Section I.E
3 of this CAFO; (iv) waives any right to contest the allegations
4 contained in Section I.C of this CAFO; and (v) waives the right
5 to appeal the proposed final order contained in this CAFO.

6 E. CIVIL ADMINISTRATIVE PENALTY

7 37. Respondent agrees to the assessment of a penalty in the
8 amount of TWENTY-EIGHT THOUSAND, FIVE HUNDRED AND SIXTY DOLLARS
9 (\$28,560) as final settlement of the civil claims against
10 Respondent arising under TSCA as alleged in Section I.C of this
11 CAFO.

12 38. Respondent shall pay the assessed penalty no later than
13 thirty (30) days after the effective date of the CAFO.

14 The assessed penalty shall be paid by **certified or cashier's**
15 **check**, payable to "Treasurer, United States of America," or paid
16 by one of the other methods listed below and sent as follows:

17 Regular Mail:

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

23 Wire Transfers:

24 Wire transfers must be sent directly to the Federal Reserve Bank
25 in New York City with the following information:

26 Federal Reserve Bank of New York
27 ABA = 021030004
28 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"

1 Overnight Mail:

2 U.S. Bank
3 1005 Convention Plaza
4 Mail Station SL-MO-C2GL
5 ATTN Box 979077
6 St. Louis, MO 63101

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

8 Automated Clearinghouse (ACH) for receiving US currency
9 PNC Bank
10 808 17th Street, NW
11 Washington, DC 20074
12 ABA = 051036706
13 Transaction Code 22 - checking
14 Environmental Protection Agency
15 Account 31006
16 CTX Format

17 On Line Payment:

18 This payment option can be accessed from the information below:

19 www.pay.gov
20 Enter "sf01.1" in the search field
21 Open form and complete required fields

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

25 Concurrently, a copy of the check or notification that the
26 payment has been made by one of the other methods listed above,
27 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:

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

34 b) Max Weintraub
35 Waste & Chemical Section (ENF-2-2)
36 Enforcement Division
37 U.S. Environmental Protection Agency, Region IX

1 75 Hawthorne Street
2 San Francisco, CA 94105

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

6 40. If Respondent fails to pay the assessed civil
7 administrative penalty specified in Paragraph 37 by the deadline
8 specified in Paragraph 38, then Respondent shall pay to EPA a
9 stipulated penalty of \$500 per day in addition to the assessed
10 penalty. Stipulated penalties shall accrue until such time as
11 the assessed penalty and all accrued stipulated penalties are
12 paid and shall become due and payable upon written request by
13 EPA. In addition, failure to pay the civil administrative
14 penalty by the deadline specified in Paragraph 38 may lead to any
or all of the following actions:

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

22 b. The debt being collected by administrative offset (i.e., the
23 withholding of money payable by the United States to, or held by
24 the United States for, a person to satisfy the debt the person
25 owes the Government), which includes, but is not limited to,
26 referral to the Internal Revenue Service for offset against
27

1 income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

2 c. EPA may (i) suspend or revoke Respondent's licenses or other
3 privileges; or (ii) suspend or disqualify Respondent from doing
4 business with EPA or engaging in programs EPA sponsors or funds.
5 40 C.F.R. § 13.17.

6 d. In accordance with the Debt Collection Act of 1982 and 40
7 C.F.R. Part 13 interest, penalties charges, and administrative
8 costs will be assessed against the outstanding amount that
9 Respondent owes to EPA for Respondent's failure to pay the civil
10 administrative penalty by the deadline specified in Paragraph 38.
11 Interest will be assessed at an annual rate that is equal to the
12 rate of current value of funds to the United States Treasury
13 (i.e., the Treasury tax and loan account rate) as prescribed and
14 published by the Secretary of the Treasury in the Federal
15 Register and the Treasury Fiscal Requirements Manual Bulletins.
16 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed
17 monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
18 Administrative costs for handling and collecting Respondent's
19 overdue debt will be based on either actual or average cost
20 incurred, and will include both direct and indirect costs. 40
21 C.F.R. § 13.11(b). In addition, if this matter is referred to
22 another department or agency (e.g., the Department of Justice,
23 the Internal Revenue Service), that department or agency may
24 assess its own administrative costs, in addition to EPA's
25 administrative costs, for handling and collecting Respondent's
26 overdue debt.

27 ///

1 F. RESPONDENT'S CERTIFICATION

2 41. In executing this CAFO, Respondent certifies that it
3 is now in compliance with the federal regulations promulgated at
4 40 C.F.R. Part 745, Subpart E.

5 G. RETENTION OF RIGHTS

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

19 43. This CAFO does not exempt, relieve, modify, or affect
20 in any way Respondent's duty to comply with all applicable
21 federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 H. ATTORNEYS' FEES AND COSTS

24 44. Each party shall bear its own attorneys' fees, costs,
25 and disbursements incurred in this proceeding.

26 I. EFFECTIVE DATE

27 45. In accordance with 40 C.F.R. §§ 22.18(b)(3) and

1 22.31(b), this CAFO shall be effective on the date that the final
2 order contained in this CAFO, having been approved and issued by
3 either the Regional Judicial Officer or Regional Administrator,
4 is filed.

5 J. BINDING EFFECT

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

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

15 ///

16 ///

1 FOR RESPONDENT, GD FRIEND, INC. DBA EVERLAST HOME ENERGY
2 SOLUTIONS

3 2-22-16

4 DATE


Richard A. Kovach
Production Manager
Everlast Home Energy Solutions

7 FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

8 3/9/16
9 DATE


Kathleen H. Johnson
Director
Enforcement Division
U.S. ENVIRONMENTAL PROTECTION AGENCY,
11 REGION IX

1
2 II. FINAL ORDER

3 Complainant and Respondent, having entered into the
4 foregoing Consent Agreement,

5 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-
6 2016-~~0006~~ be entered, and that Respondent shall pay a civil
7 administrative penalty in the amount of TWENTY-EIGHT THOUSAND,
8 FIVE HUNDRED AND SIXTY DOLLARS (\$28,560) and comply with the
9 terms and conditions set forth in the Consent Agreement. This
10 Consent Agreement and Final Order shall become effective upon
11 filing.

12 03/11/16
13 DATE

14 
15 STEVEN L. JAWGIEL
16 Regional Judicial Officer
17 U.S. Environmental Protection
18 Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of GD Friend Inc., TSCA-09-2016-0006, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk (file date March 11, 2016), and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent -

Richard A. Kovach, Production Manager
GD Friend Inc. (dba Everlast Home Energy Solutions)
2921 Daimler Street
Santa Ana, CA 92705

HAND DELIVERED:

Complainant -

Carol Bussey, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, Calif., this 11th day of March, 2016.



Steven Armsey
Regional Hearing Clerk
EPA, Region 9