UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7015 0640 0001 1121 9561
Return Receipt Requested

SEP 27 2019

Tigran Poghosyan
Fusion Windows and Doors Inc.
479 W. Riverside Drive
Burbank, CA 91506

Re: Complaint and Notice of Opportunity for Hearing
In the Matter of: Fusion Windows and Doors Inc.

Dear Mr. Poghosyan:

Enclosed please find a Complaint and Notice of Opportunity for Hearing issued by the United States Environmental Protection Agency, Region 9, to initiate administrative proceedings against Fusion Windows and Doors Inc.

In addition, copies of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22; and the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP) are also enclosed.

If you have any questions, please contact me at 415-972-3982 or Edgar Coral, in the Office of Regional Counsel, at (415) 972-3898.

Sincerely,

Matt Salazar, PE
Manager, Toxics Section
Enforcement and Compliance Assurance Division

Enclosures

SYLVIA A. QUAST
Regional Counsel

EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:	)	Docket No. TSCA-09-2019-0070
	)	
Fusion Windows and Doors Inc.,	)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
	)	
Respondent.	)	
	)	

I. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Section 16(a) of TSCA authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue a civil complaint for each violation of Section 409 of TSCA, 15 U.S.C. § 2689.

2. Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA, Region IX, who has been duly delegated the authority to bring this action. Respondent is Fusion Windows and Doors Inc., a California corporation with offices located at 479 West Riverside Drive in Burbank, California, that performed renovations at six residential properties located in Glendale or Los Angeles, California.

3. This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing

to comply with Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

II. GENERAL ALLEGATIONS

4. EPA has jurisdiction over this matter pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

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

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

7. "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 six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. § 2681.

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

9. "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. 40 C.F.R. § 745.83.

10. "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is part of an abatement as defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of

painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (*e.g.*, walls, ceilings, plumbing windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics planning thresholds to install weatherstripping), and interim controls that disturb painted surfaces . . . . The term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

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

12. "Component or building component" means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to interior components such as . . . windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40 C.F.R. § 745.83.

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

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

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

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

17. Between approximately November 2015 and August 2016, Respondent performed "renovations," as that term is defined at 40 C.F.R. § 745.83, for compensation at the residential properties located at: 944 North Howard Street in Glendale, California; 1435 East Garfield Avenue in Glendale California; 1208 Bruce Avenue in Glendale, California; 1434 Graynold Avenue in Glendale, California; 754 Glenmore Boulevard in Glendale, California; and 3460 Alsace Avenue in Los Angeles, California (collectively, the "Properties").

18. At all times relevant to this Complaint, the Properties were "target housing," as that term is defined at 40 C.F.R. § 745.83.

III. ALLEGED VIOLATIONS

COUNT 1: Failure to comply with 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)

19. Paragraphs 4 through 18 above are hereby alleged and incorporated by reference as if set forth herein in full.

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

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

22. At all times relevant to this Complaint, Respondent did not have a certification from EPA to perform renovations for compensation at the Properties.

23. At all times relevant to this Complaint, the Properties had not been determined to be lead-free pursuant to 40 C.F.R. § 745.82(a) before the renovations for compensation occurred.

24. Respondent's performance of renovations for compensation at the Properties without certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 2-7: Failure to comply with 40 C.F.R. § 745.84(a)(1)

25. Paragraphs 4 through 18 above are hereby alleged and incorporated by reference as if set forth herein in full.

26. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the "pamphlet," as that term is defined at 40 C.F.R. § 748.83. 40 C.F.R. § 745.84(a)(1).

27. Respondent did not provide the owners with the "pamphlet" prior to the renovations at the Properties.

28. Respondent's failures to provide the owners with the "pamphlet" prior to the renovations at the Properties constitute six violations of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 8-31: Failure to comply with 40 C.F.R. § 745.86(b)(6)

29. Paragraphs 4 through 18 above are hereby alleged and incorporated by reference as if set forth herein in full.

30. Firms performing renovations must retain documentation of compliance with the requirements of § 745.85, including documentation that: a certified renovator was assigned to the project; a certified renovator provided on-the-job training for workers used on the project; a certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and a certified renovator performed the post-renovation cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

31. Respondent did not retain documentation for the renovations performed at the Properties that: a certified renovator was assigned to the project; a certified renovator provided on-the-job training for workers used on the project; a certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and a certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

32. Respondent's failures to retain documentation for the renovations performed at the Properties that: a certified renovator was assigned to the project; a certified renovator provided on-the-job training for workers used on the project; a certified renovator performed or directed workers who performed all of the work practice tasks described in § 745.85(a); and a certified renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute 24 violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

IV. PROPOSED CIVIL PENALTY

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes civil penalties of not more than $37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, occurring on or before November 2, 2015 and $39,873 for each violation occurring after November 2, 2015, where penalties are assessed on or after January 15, 2019 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Acts of 1990 and 2015, Pub. L. 101-410.

In assessing any civil penalty, Section 16(a) of TSCA requires that EPA take into account the nature, circumstances, extent, and gravity of the violations; Respondent's history of such violations of TSCA; the degree of culpability involved; Respondent's ability to pay a penalty without jeopardizing their ability to continue to do business; and such other factors as justice may require. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess Respondent a civil administrative penalty of up to $37,500 or $39,873 (as applicable) for each of the violations of TSCA set forth above.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. 2615(a), you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no

knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

In addition, please send a copy of the Answer and all other documents that you file in this action to:

Edgar P. Coral
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

You are further informed that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VI. INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Mr. Coral, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

VII. ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts.

Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

VIII. CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties would be binding as to all terms and conditions specified therein when the Regional Judicial Officer signs the Final Order.

Dated at San Francisco, California on this 23 day of September, 2019.

MATT SALAZAR, PE
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22; and (3) Consolidated Enforcement Response and Penalty Policy (LBP Consolidated ERPP) were sent by U.S. Certified Mail, Return Receipt Requested, to:

Tigran Poghosyan
Fusion Windows and Doors Inc.
479 W. Riverside Drive
Burbank, CA 91506

Certified Mail #7015 0640 0001 1121 9561

Date: 9/27/2019

By: _____
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency,
Region IX