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7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. TSCA-09-2020-0067
12)
13 Dilbeck & Sons, Inc.,) CONSENT AGREEMENT
14) AND FINAL ORDER
Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
15
16

17 I. CONSENT AGREEMENT

18 The United States Environmental Protection Agency, Region IX (“EPA”), and Dilbeck &
19 Sons, Inc. (the “Respondent”) agree to settle this matter and consent to the entry of this Consent
20 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
21 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action brought against Respondent pursuant to
24 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
25 of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406
26 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at
27 40 C.F.R. Part 745, Subpart E.
28

1 2. Complainant is the Manager of the Toxics Branch in the Enforcement and Compliance
2 Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this
3 action and to sign a consent agreement settling this action.

4 3. Respondent, a California corporation headquartered in Salinas, California, is a
5 residential and commercial property renovator that performs renovations in Northern California.

6 B. STATUTORY AND REGULATORY BASIS

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

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

15 6. “Target housing” means any housing constructed prior to 1978, except housing for the
16 elderly or persons with disabilities (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. Section 401 of TSCA, 15
18 U.S.C. § 2681.

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

23 8. “Firm” means a company, partnership, corporation, sole proprietorship or individual
24 doing business, association, or other business entity; a Federal, State, Tribal, or local government
25 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

26 9. “Renovation” means the modification of any existing structure, or portion thereof, that
27 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
28 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the

1 removal, modification or repair of painted surfaces or painted components (*e.g.*, modification of
2 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
3 scraping, or other such activities that may generate paint dust); the removal of building
4 components (*e.g.*, walls, ceilings, plumbing windows); weatherization projects (*e.g.*, cutting
5 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
6 thresholds to install weatherstripping), and interim controls that disturb painted surfaces

7 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
8 745.83.

9 10. “Painted surface” means a component surface covered in whole or in part with paint
10 or other surface coatings. 40 C.F.R. § 745.83.

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

17 12. “Renovator” means any individual who either performs or directs workers who
18 perform renovations. A certified renovator is a renovator who has successfully completed a
19 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
20 745.83.

21 13. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead
22 Hazard Information for Families, Child Care Providers and Schools,” developed under Section
23 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal
24 pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same
25 purpose. 40 C.F.R. § 745.83.

26 14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
27 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
28 Inflation Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to

1 exceed \$40,576 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
2 occurred after November 2, 2015 where penalties were assessed on or after January 13, 2020.

3 C. ALLEGED VIOLATIONS

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

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

7 17. In or around 2019, Respondent performed a “renovation,” as that term is defined at
8 40 C.F.R. § 745.83, for compensation at the residential property located at 15 Palmetto Street in
9 Salinas, California (the “Property”).

10 18. At all times relevant to this CAFO, the Property was “target housing,” as that term is
11 defined at 40 C.F.R. § 745.83.

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

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

18 21. At all times relevant to this CAFO, Respondent did not have a certification from
19 EPA to perform a renovation for compensation at the Property.

20 22. At all times relevant to this CAFO, the Property had not been determined to be lead-
21 free pursuant to 40 C.F.R. § 745.82(a) before the renovation for compensation occurred.

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

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

28 25. Respondent did not provide the owner with the “pamphlet” prior to the renovation at

1 the Property.

2 26. Respondent's failure to provide the owner with the "pamphlet" prior to the renovation
3 at the Property constitutes one violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15
4 U.S.C. § 2689.

5 27. Firms performing renovations must comply with the work practice standards of §
6 745.85, including the posting of signs clearly defining the work area and warning occupants and
7 other persons not involved in renovation activities to remain outside of the work area. 40 C.F.R. §
8 745.85(a)(1).

9 28. Respondent did not post signs clearly defining the work area and warning occupants
10 and other persons not involved in renovation activities to remain outside of the work area for the
11 renovation performed at the Property.

12 29. Respondent's failure to post signs clearly defining the work area and warning
13 occupants and other persons not involved in renovation activities to remain outside of the work
14 area for the renovation performed at the Property constitutes one violation of 40 C.F.R. §
15 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

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

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

27 32. Respondent's failures to retain documentation for the renovation performed at the
28 Property that: a certified renovator was assigned to the project; a certified renovator provided

1 on-the-job training for workers used on the project; a certified renovator performed or directed
2 workers who performed all of the work practice tasks described in § 745.85(a); and a certified
3 renovator performed the post-renovation cleaning verification described in § 745.85(b) constitute
4 four violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.

5 33. Firms performing renovations must ensure that a certified renovator is assigned to
6 each renovation performed by the firm and discharges all of the certified renovator
7 responsibilities identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

8 34. Respondent did not ensure that a certified renovator discharged all of the certified
9 renovator responsibilities identified in § 745.90 for the renovation performed at the Property.

10 35. Respondent's failure to ensure that a certified renovator discharged all of the certified
11 renovator responsibilities identified in § 745.90 for the renovation performed at the Property
12 constitutes one violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. §
13 2689.

14 D. RESPONDENT'S ADMISSIONS

15 36. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
16 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
17 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
18 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
19 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
20 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
21 proposed Final Order contained in this CAFO.

22 E. CIVIL ADMINISTRATIVE PENALTY

23 37. In full and final settlement of the violations specifically alleged in Section I.C of this
24 CAFO, Respondent shall pay a civil administrative penalty of TWENTY-TWO THOUSAND,
25 SEVEN HUNDRED, AND SEVENTY-FOUR DOLLARS (\$22,774). Respondent shall pay this
26 civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be
27 paid by remitting a certified or cashier's check, including the name and docket number of this
28 case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the

1 other methods listed below) and sent as follows:

2
3 Regular Mail:

4 U.S. Environmental Protection Agency
5 Fines and Penalties
6 Cincinnati Finance Center
7 PO Box 979077
8 St. Louis, MO 63197-9000

9 Wire Transfers:

10 Wire transfers must be sent directly to the Federal Reserve Bank in New
11 York City with the following information:
12 Federal Reserve Bank of New York
13 ABA = 021030004
14 Account = 68010727
15 SWIFT address = FRNYUS33
16 33 Liberty Street
17 New York, NY 10045
18 Beneficiary = U.S. Environmental Protection Agency

19 Certified or Overnight Mail:

20 U.S. Bank
21 1005 Convention Plaza
22 Mail Station SL-MO-C2GL
23 ATTN Box 979077
24 St. Louis, MO 63101

25 ACH (also known as Remittance Express or REX):

26 Automated Clearinghouse (ACH) payments to EPA can be made through
27 the U.S. Treasury using the following information:

28 U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

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

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

7
8 Regional Hearing Clerk
9 Office of Regional Counsel (ORC-1)
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, CA 94105
13 armsey.steven@epa.gov

14
15 Max Weintraub
16 Toxics Branch
17 Enforcement and Compliance Assurance Division (ENF-4)
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105
21 weintraub.max@epa.gov

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23 38. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
24 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
25 use such payment as a tax deduction.

26
27 39. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-
28 TWO THOUSAND, SEVEN HUNDRED, AND SEVENTY-FOUR DOLLARS (\$22,774)
(\$22,774), as identified in Paragraph 37, by the deadline specified in that Paragraph, then
Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per
day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the
assessed penalty and all accrued stipulated penalties are paid and shall become due and payable
upon EPA's written request. Failure to pay the civil administrative penalty specified in
Paragraph 37 by the deadline specified in that Paragraph may also lead to any or all of the
following actions:

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

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

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

14 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
15 Government may assess interest, administrative handling charges, and nonpayment penalties
16 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
17 civil administrative penalty specified in Paragraph 37 by the deadline specified in that Paragraph.

18 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
19 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
20 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
21 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
22 (30) days of the effective date of this CAFO.

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

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

4 F. CERTIFICATION OF COMPLIANCE

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

7 G. RETENTION OF RIGHTS

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

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

19 H. ATTORNEYS' FEES AND COSTS

20 43. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
21 this proceeding.

22 I. EFFECTIVE DATE

23 44. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
24 effective on the date that the Final Order contained in this CAFO, having been approved and
25 issued by either the Regional Judicial Officer or Regional Administrator, is filed.
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1 J. BINDING EFFECT

2 45. The undersigned representative of Complainant and the undersigned representative of
3 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
4 of this CAFO and to bind the party he or she represents to this CAFO.

5 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its
6 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
7 and assigns.
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16 FOR RESPONDENT DILBECK & SONS, INC.:

17
18 9/8/20
DATE

19 
SHARON DILBECK
CEO
Dilbeck & Sons, Inc.

20
21
22 FOR COMPLAINANT EPA:

23
24 9/09/2020
DATE

25 **MATTHEW** Digitally signed by
26 **SALAZAR** MATTHEW SALAZAR
Date: 2020.09.09
16:39:35 -07'00'
27 MATT SALAZAR, P.E.
28 Manager, Toxics Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Dilbeck & Sons, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2020-0067) be entered,
4 and Respondent shall pay a civil administrative penalty in the amount of TWENTY-TWO
5 THOUSAND, SEVEN HUNDRED, AND SEVENTY-FOUR DOLLARS (\$22,774) and
6 comply with the terms and conditions set forth in the Consent Agreement.

7
8 **Steven L.
9 Jawgiel**

Digitally signed by Steven L. Jawgiel
Date: 2020.09.23 10:57:58 -07'00'

10 _____
11 DATE

12 _____
13 Steven Jawgiel
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Dilbeck & Sons, Inc. (TSCA-09-2020-0067), has been filed with the Regional Hearing Clerk, and a copy was served on the Respondent and on the Complainant as indicated below:

RESPONDENT

Sharon Dilbeck
Dilbeck & Sons, Inc.
Email: sharon@dilbeckandsons.com

COMPLAINANT

Edgar P. Coral
Assistant Regional Counsel
EPA - Region 9
Email: Coral.Edgar@epa.gov

Date: _____, 2020

Steven Armsey
Regional Hearing Clerk
EPA, Region 9