

Complaint

IN THE MATTER OF

N.E.W. PLASTICS CORP.

D/B/A

RENEW PLASTICSCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4449; File No. 132 3126*
Complaint, April 3, 2014 – Decision, April 3, 2014

This consent order addresses N.E.W. Plastics Corp.'s green claims made while promoting two brands of plastic lumber products, Evolve and Trimax, to retailers, independent distributors and end-use consumers. The complaint alleges that Respondent falsely claimed (1) Evolve products as made from 90% or more recycled content; (2) Trimax products as made from mostly post-consumer recycled content; and (3) both Trimax and Evolve as recyclable. The complaint further alleges that Respondent did not possess or rely upon a reasonable basis to substantiate these representations. The consent order prohibits N.E.W. from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence.

Participants

For the *Commission*: Robert Frisby and Elisa K. Jillson.

For the *Respondent*: Nelson W. Phillips III, Davis & Kuelthau, S.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that N.E.W. Plastics Corp., a corporation ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent N.E.W. Plastics Corp., also doing business as Renew Plastics, is a Wisconsin corporation with its principal office or place of business at 112 Fourth Street, Luxemburg, Wisconsin 54217.

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2. Respondent has manufactured, advertised, offered for sale, sold, and distributed Evolve plastic lumber products (“Evolve”) and Trimax plastic lumber products (“Trimax”) to independent distributors and retailers located throughout the United States. Respondent advertises Evolve and Trimax through promotional materials, including brochures, DVDs, and the websites <http://www.renewplastics.com> and <http://www.trimaxbp.com>. Respondent’s distributors and retailers have disseminated, or have caused the dissemination of, the advertising claims in these promotional materials to end-use consumers. In addition, Respondent has directly disseminated the advertising claims in these promotional materials to end-use consumers through its websites.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Since at least March 2011, Respondent has disseminated to independent distributors, retailers, or end-use consumers, or has caused to be disseminated to end-use consumers, the promotional materials referenced in Paragraph 2, including but not limited to the attached Exhibits A through E. These materials contain the following statements:

- a. Renew Website (Exhibit A, excerpt from <http://www.renewplastics.com>)

“When you build with EVOLVE recycled plastic lumber, you demonstrate your commitment to the environment and sustainable living. EVOLVE recycled plastic lumber products are 100% plastic and generally contain over 90% recycled high density polyethylene (ReHDPE) material.” (*Id.* at 1)

“[Evolve is] 100% recyclable[.]” (*Id.* at 1, 3)

“EVOLVE is a plastic composite material that consists of at least 90% recycled Type 2 High Density Polyethylene (HDPE) with the remainder of the

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material being foaming agents and color with UV inhibitors.” (*Id.* at 4)

“The composite mixture of the end product [EVOLVE lumber] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials.” (*Id.* at 7)

- b. Trimax Website (Exhibit B, excerpt from <http://www.trimaxbp.com>)

“Trimax Structural Lumber is a patented formulation of fiberfill and recycled milk jugs.” (*Id.* at 1)

“Trimax Structural Lumber is a high-performance construction material consisting of a patented formula of recycled plastics, fiberglass, and select additives. The plastic raw material utilized in Structural Lumber is derived from post-consumer bottle waste such as milk and detergent bottles.” (*Id.* at 2)

- c. Trimax Promotional Material (Exhibit C, Doc. No. 04_01_2010)

“The product [Trimax] is recyclable[.]” (*Id.* at 1)

- d. Evolve Speed Bump Brochure (Exhibit D, Doc. No. 02_10_2009)

“The composite mixture of the end product [EVOLVE speed bump] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials.” (*Id.* at 1)

- e. ICC-ES Evaluation Report for Evolve (Exhibit E, Doc. No. 07_01_2009)

“EVOLVE . . . is made of a plastic composite material that consists of 90 percent recycled high-density polyethylene (HDPE), with the remaining 10 percent being foaming agents and color with ultraviolet inhibitors.” (*Id.* at 1)

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5. From September 15, 2012 to March 17, 2013, Evolve contained, at most, 58% recycled plastic.

6. During the period from March 2011 to March 2013, the recycled plastic in Trimax, on average, contained less than 12% post-consumer recycled content.

7. By representing that a product is recyclable, respondent implies to reasonable consumers that facilities that will recycle the item are available to a substantial majority of consumers or communities where the item is sold.

8. Local recycling centers do not recycle Evolve and Trimax due to their non-plastic content and size and weight greater than that of household items typically recycled in such centers. The cost to consumers of shipping Evolve and Trimax to Respondent's factory for re-use in the manufacturing process generally exceeds the amount Respondent will pay consumers for returning the item. Facilities that will recycle Evolve and Trimax are thus not available to a substantial majority of consumers or communities where these products are sold.

Count I
False or Misleading Claims

9. Through the means described in Paragraph 4, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Evolve generally contains over 90% recycled plastic;
- b. Evolve is at least 90% recycled plastic;
- c. Evolve is 90% recycled plastic;
- d. The recycled plastic in Trimax is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

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- e. Evolve and Trimax are recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

10. In truth and in fact:

- a. From September 15, 2012 to March 17, 2013, Evolve did not generally contain over 90% recycled plastic;
- b. From September 15, 2012 to March 17, 2013, Evolve was not at least 90% recycled plastic;
- c. From September 15, 2012 to March 17, 2013, Evolve was not 90% recycled plastic;
- d. The recycled plastic in Trimax is not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and
- e. Evolve and Trimax are not recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

11. Therefore, the representations set forth in Paragraph 9 are false or misleading.

Count II
Unsubstantiated Claims

12. Through the means described in Paragraph 4, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made.

13. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made. Therefore, the representation set forth in Paragraph 12 was, and is, false or misleading.

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**Count III
Means and Instrumentalities**

14. In connection with the advertising, promotion, offering for sale, or sale of Evolve and Trimax, Respondent has distributed promotional materials making the representations set forth in Paragraph 4 to retailers and independent distributors. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

Violations of Section 5

15. Respondent's false or misleading representations constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this third day of April, 2014, has issued this Complaint against Respondent.

By the Commission.

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Exhibit A



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[Deck/Dock/Porch CONSUMER](#)

Deck/Dock/Porch CONSUMER

PRODUCT FEATURES

[Colors and Finishes](#)

[Profiles](#)

[Environmental Impact](#)

[Lifetime Warranty](#)

[Care and Maintenance](#)

[FAQs](#)

APPLICATIONS

[Decks](#)

[Docks](#)

[Porches and Restoration](#)

[Featured Project](#)

[Product Comparison](#)

[Building Guide](#)

[Information Download Center](#)

LOCATE A DEALER

FAQs - Consumer

For additional information and construction details, visit the [FAQ Professional](#) page.

Q. What is EVOLVE® high-density plastic lumber?
A. EVOLVE high-density plastic lumber is a solid, non-hollow foamed recycled plastic made from recycled high density polyethylene (HDPE) plastic, with no fillers. Common HDPE (recycling code # 2) products are gallon style milk, water and juice containers, as well as some detergent and shampoo bottles.

Q. What percentage of EVOLVE high-density plastic lumber is made from recycled plastic?
A. EVOLVE plastic lumber is 100% plastic with no wood fillers to rot, peel, weather or blister, and generally contains over 90% recycled HDPE plastic material.

Q. How much does EVOLVE alternative plastic decking weigh?
A. EVOLVE® plastic decking is comparable in weight to a good hardwood such as oak.

Q. What standard decking colors are available in inventory?
A. Standard colors in our deck and deck profiles are Dove Gray, Cedar, Weatherwood, and some railing material in White. Standard decking profile colors are subject to change over time.

Q. Are the EVOLVE plastic lumber boards colored throughout?
A. Yes, even when cut or routed, the exposed product is colored.

Q. Will my EVOLVE plastic lumber boards have consistent color and texture?
A. We make every effort to maintain color consistency. However, due to utilizing recycled materials, and the standard allowable variances in the color we purchase, shade variations can occur in our lumber. The texture may be slightly different from board to board due to the manufacturing process.

Q. Can an EVOLVE deck be stained or painted?
A. Staining or painting will not harm alternative decking material from EVOLVE. However, EVOLVE was designed to eliminate the need for such work. Stain or paint, if applied to the boards, will not penetrate the surface because the product doesn't absorb moisture. Therefore, stains or paints will tend to flake off the surface of the material over time.

Q. Will EVOLVE plastic lumber fade over time?
A. All of our EVOLVE high density plastic lumber has ultra-violet (UV) stabilizers added to help protect the color and the integrity of the HDPE.

Q. Do you have any minimum order requirements?
A. Yes. Please see the [Profile Chart](#) for minimum order quantities.

Q. Does EVOLVE plastic lumber have a grain pattern?
A. EVOLVE high density plastic lumber is very durable, and yet flexible. It does require more substructure compared to wood lumber because it doesn't have a grain pattern. Our product eliminates grain splitting.

Q. How long will my EVOLVE deck or dock last?
A. EVOLVE high density plastic lumber is still going strong after over twenty years of accelerated weather testing. We haven't seen the total life span of the product to date. We do have product installed on boat docks since 1976 with no sign of degradation.

Q. How do I take care of my plastic lumber decking?
A. Washing EVOLVE plastic lumber with a hose or a mop is about all that is needed under normal circumstances. You can use a mixture of bleach and water (1 part bleach to 10 parts water) to clean stubborn stains on the material.

Q. Will an EVOLVE deck or dock be slippery when wet?
A. EVOLVE high density plastic lumber is no more slippery than painted or sealed wood when wet. A natural film, which can't be seen or felt, is left on the surface of the material after manufacturing. Sunlight will normally "burn off" this film in a few weeks.

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LEGACY REPORT

NER-702

Issued March 1, 2004

ICC Evaluation Service, Inc.
www.icc-es.org

Business/Regional Office ■ 5360 Wilshire Mill Road, Whittier, California 90601 ■ (562) 896-0543
Regional Office ■ 900 Montclair Road, Suite A, Birmingham, Alabama 35213 ■ (205) 596-9800
Regional Office ■ 4051 West Florencia Road, Country Club Hills, Illinois 60478 ■ (708) 795-2305

Legacy report on the 2000 International Building Code®, the 2002 Accumulative Supplement to the International Codes™, the BOCA® National Building Code 1999, the 1999 Standard Building Code®, the 1997 Uniform Building Code®, and the 2000 International Residential Code®

DIVISION 06 - WOOD AND PLASTICS
Section 06500 - Structural Plastics

RENEW PLASTICS,
A DIVISION OF N.E.W. PLASTICS CORP.
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1.0 SUBJECT

- 1.1** Perma-Poly™ Lumber Plastic Decking
1.2 EVOLVE® Lumber Plastic Decking

2.0 PROPERTY FOR WHICH EVALUATION IS SOUGHT

Structural

3.0 DESCRIPTION

3.1 General

RENEW Plastics' Perma-Poly™ and EVOLVE® Lumber Plastic Decking are used as a flooring or non-structural trim components for exterior balconies, porches, decks, and other exterior walking surfaces where combustible construction is permitted. Perma-Poly™ and EVOLVE® are the same product with different names for marketing purposes. Perma-Poly™ and EVOLVE® is a plastic composite material that consists of at least 90% recycled Type 2 High Density Polyethylene (HDPE) with the remainder of material being foaming agents and color with UV inhibitors. The HDPE composite material is manufactured by a continuous extrusion process in accordance with the listed quality control manual to produce comparable lumber-sized members with nominal sizes as listed in Table 1 of this report.

3.2 Structural

Table 1 lists the allowable spans of Perma-Poly™ and EVOLVE® Lumber used as decking (flat-wise bending).

4.0 INSTALLATION

The manufacturer's published installation instructions and this report shall be strictly adhered to and a copy available on the jobsite at all times during installation. The installation instructions within this report govern if there are any conflicts between the manufacturer's published installation instructions and this report.

TABLE 1
MAXIMUM ALLOWABLE SPANS^{1,2,3}

LUMBER SIZE (inches)	MAXIMUM UNIFORM LOAD	
	40 psf	100 psf
	SPAN (inches)	
¾ x 5½	12	9
¾ x 6	12	9
1 x 5½	16	11
1½ x 3½	16	11
1½ x 5½	23	17

SI: 1 inch = 25.4 mm, 1 psf = 47.88 Pa

- Spans are for members used as planking (flat-wise bending).
- Members shall be supported by a minimum of three joist (2 spans) and shall be fastened at each joist.
- Use of members as stair treads is outside the scope of this table.

5.0 IDENTIFICATION

Perma-Poly™ and EVOLVE® Lumber Plastic Decking planks shall be labeled with the manufacturer's name and/or trademark, the product name, the name and/or trademark of the third party inspection agency (Intertek) and this evaluation report number.

6.0 EVIDENCE SUBMITTED

- 6.1** Manufacturer's descriptive literature and installation instructions.

ICC-ES legacy reports are not to be construed as representing a testimonial or any other attributes not specifically addressed, nor are they to be construed as an endorsement of the subject of the report or a recommendation for its use. There is no warranty by ICC Evaluation Service, Inc., express or implied, as to any finding or other matter in this report, or as to any product covered by the report.



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| <p>6.2 Test report on EVOLVE® Lumber in accordance with ASTM D 6662, prepared by Intertek Testing Services, Report No. 3022869, dated January 9, 2003, Revised January 17, 2003, signed by Kazimir L. Falconbridge and Cameron Robinson.</p> <p>6.3 Test report on Fire Retardancy Test of a RENEW Plastics Lumber Decking Boards, prepared by Intertek Testing Services, Report No. 3025606, dated June 10, 2002, signed by Kent Kelsey and Rick Curkeet.</p> <p>6.4 Quality Control/Factory Audit Manual for EVOLVE® or Perma-Poly™ Recycled Plastic Lumber, dated November 2002, Revised December 19, 2003, signed by Lynie Vincent (RENEW Plastics) and Mike Van Geyn (Intertek Testing).</p> <p>6.5 Letter on equivalency of product sizes, prepared by Intertek Testing Services, dated February 25, 2003, signed by Chits Bowness and Francis Roma.</p> <p>6.6 Test report on Standard Flame Spread Test Program in accordance with ASTM E 84, prepared by Intertek Testing Services, Report No. 3031070, dated August 30, 2002, signed by Greg Philip and Michael van Geyn.</p> <p>6.7 Span length calculations for 40 psf and 100 psf at 130°F, prepared by Intertek Testing Services, Project 3022869, dated July 30, 2003, signed and sealed by Cameron Robinson, P.Eng.</p> <p>7.0 CONDITIONS OF USE</p> <p>The ICC-ES Subcommittee for the National Evaluation Service, Inc. finds that the application of Perma-Poly™ and EVOLVE® Lumber Plastic Decking as described in this report complies with or is a suitable alternate to the materials prescribed in the 2000 International Building Code®, the 2002 <i>Accumulative Supplement to the International Codes™</i>, the BOCA® <i>National Building Code</i> 1999, the 1999 <i>Standard Building Code</i>®, the 1997 <i>Uniform Building Code™</i>, and the 2000 <i>International Residential Code®</i> subject to the following conditions:</p> | <p>7.1 Perma-Poly™ and EVOLVE® Lumber Plastic Decking shall be limited to exterior applications where combustible construction is permitted.</p> <p>7.2 Use of Perma-Poly™ and EVOLVE® Lumber Plastic Decking in applications where fire-rated construction is required is outside the scope of this report.</p> <p>7.3 Perma-Poly™ and EVOLVE® Lumber shall be gapped to permit adequate drainage in accordance with the manufacturer's instructions.</p> <p>7.4 Perma-Poly™ and EVOLVE® Lumber shall not be attached to any solid surface or watertight flooring system, such as sheathing, waterproof membranes, concrete, roof decks, or patios.</p> <p>7.5 Use of Perma-Poly™ and EVOLVE® Lumber in applications where the code requires solid-sawn lumber to be naturally durable or preservative-treated is outside the scope of this report.</p> <p>7.6 Use of Perma-Poly™ and EVOLVE® Lumber for single span applications is outside the scope of this report.</p> <p>7.7 Perma-Poly™ and EVOLVE® Lumber shall be fastened directly to floor joists having adequate strength and stiffness in accordance with the applicable code.</p> <p>7.8 Perma-Poly™ and EVOLVE® Lumber shall not be used in applications that will cause the temperature of the board to exceed 130°F (54°C).</p> <p>7.9 This report is subject to periodic re-examination. For information on the current status of this report, consult the ICC-ES website.</p> |
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Custom Extrusions

PRODUCT FEATURES

- Colors and Finishes
- Machinability
- Profiles
- Environmental Impact
- Lifetime Warranty
- Trademark
- FAQs

APPLICATIONS

- Information Download Center
- Photo Gallery

LOCATE A DEALER

Applications

Strong, Recyclable Plastic
 EVOLVE® is strong, impervious to most chemicals, needs minimal (if any) maintenance, and is highly cost effective. EVOLVE is composed of polyethylene and is entirely recyclable.

Material Characteristics

- Non-absorptive
- Impervious to most chemicals
- Solid color to core
- Durable, wear resistant
- Flame resistant
- Environmentally friendly
- Machinable
- Variety of colors

Application Benefits

- Trim costs
- Increase product life
- Decrease noise
- Reduce wear
- Minimize downtime





EVOLVE has been successfully utilized in many industrial, commercial and agricultural applications.

[Product Application List](#)

N.E.W. Plastics Corp. makes efforts to reduce the footprint of human consumption. This seal represents our commitment to corporate policies and practices that protect the environment for future generations.

[Click on the seal to learn more >>>](#)


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**MATERIAL COMPOSITION &
TESTING DATA**



EVOLVE® LUMBER

EVOLVE lumber is a solid, non-hollow, foamed recycled product manufactured from recycled Type 2 High Density Polyethylene (ReHDPE), with no fillers. The composite mixture of the end product is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials. The plastic is impregnated with colorant and UVI to help protect the material from physical degradation, flaking and color fade.

EVOLVE lumber is a non-commingled "pulttruded" product. This promotes a network of complete molecular linkage. EVOLVE lumber is able to sustain normal loading at temperatures ranging from -40°F to 110°F with proper installation.

EVOLVE lumber is manufactured using only heavy-metal free colorants, to be environmentally friendly, and to meet current and future federal standards.

PERMA-POLY® SHEETING

Perma-Poly sheet material is manufactured from a mixture of virgin and recycled Type 2 High Density Polyethylene (HDPE & ReHDPE). The composite mixture of the end product is at least 50% ReHDPE, utilizing both post-consumer and post-industrial materials. The plastic is impregnated with colorant and UVI to help protect the material from physical degradation, flaking and color fade.

Perma-Poly sheet is a non-commingled, extruded product. This promotes a network of complete molecular linkage. Perma-Poly sheet is able to sustain normal loadings at temperatures ranging from -40°F to 110°F with proper installation.

Perma-Poly sheet is manufactured using only heavy-metal free colorants, to be environmentally friendly, and to meet current and future federal standards.

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Exhibit B

The screenshot displays the Trimax website with a green and white color scheme. The header includes the Trimax logo and navigation links: Home, Products, Applications, Technical Data, Dealer Locator, and Project Ideas. A sidebar on the left lists product categories: Environmental Decking, Trimax Structural Lumber (with sub-links for Colors, Sizes, and FAQ's), and OEM Products. The main content area features a large image of structural lumber and joists, with the heading 'SOLUTIONS YOU CAN BUILD ON'. Below this, a section titled 'Trimax Structural Lumber' describes it as a replacement for pressure treated lumber. Another section, 'Structural Components without the worry', explains that the product is made from fiberfill and recycled milk jugs. A 'Why Trimax?' section addresses concerns about ACQ and CCA treatments, noting that ACQ is recommended but can corrode fasteners. The 'Trimax as a Deckboard' section mentions that the product is also suitable for decking. At the bottom, a chart titled 'Trimax Deckboard Allowable Joist Spacing' is partially visible.

TRIMAX

SOLUTIONS YOU CAN BUILD ON

Home Products Applications Technical Data Dealer Locator Project Ideas

PRODUCTS

- Environmental Decking
- Trimax Structural Lumber
 - Colors
 - Sizes
 - FAQ's
- OEM Products

Trimax Structural Lumber
replacement for pressure treated lumber

Joists

Structural Components without the worry

Trimax Structural Lumber is a patented formulation of fiberfill and recycled milk jugs. Together, these ingredients form structural components that allow the consumers the ability to build structures out of plastic lumber, from the ground up!

Why Trimax?

ACQ, CCA, what does this REALLY mean for me?

Pressure treated lumber has become a topic that is ever changing. First, in many years past, CCA (chromated copper arsenate) treated lumber was the answer. This was a durable treatment that would help the lumber weather the elements. Upon research and investigation, in December of 2003, the EPA (Environmental Protection Agency) banned the use of CCA treated lumber saying that other treatments are "safer." Now ACQ (alkaline copper quat) is recommended, but within the first year, ACQ, due to the extremely high levels of copper has been found to corrode fasteners at an accelerated pace.

The question is, what health issues in the future will they find wrong with ACQ? And how can I protect my loved ones against any of these issues?

And by the way, Trimax doesn't rot, warp, crack, chip, splinter or fade!

The answer is simple. Trimax Structural Lumber.

Trimax as a Deckboard

Trimax Structural Lumber is a great fit for use as structure but because it is structural, Trimax is also a great fit for a deck board. Trimax manufactures boards that have varying thicknesses. Please refer to the chart below that shows the joist spacing that can be used for deckboards of varying thicknesses.

Trimax Deckboard Allowable Joist Spacing

1

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Technical Data

TRIMAX® Structural Lumber

DESCRIPTION

TRIMAX® Structural Lumber is a high-performance construction material consisting of a patented formula of recycled plastic, fiberglass, and select additives. The plastic raw material utilized in Structural Lumber is derived from post-consumer bottle waste such as milk and detergent bottles. The material is compounded into a consistent mixture of fiberglass and plastic that give it the structural properties in the table below.

Structural Lumber is a cost-effective and high-performance timber product for marine construction and commercial applications. It has exceptional resistance to marine borers, salt spray, termites, corrosive substances, oil and fuels, fungi, and other environmental stresses. It does not absorb moisture; therefore, it will not rot, splinter or crack.

Structural Lumber products are manufactured in many dimensional lumber and timber sizes, particularly in large cross sections. Deck and dock planks, sheet piling, waste timbers, canals, tenders, and piles are all available from TRIMAX® Structural Lumber. The product comes in almost any transportable length and is standard in Black. It can be special ordered in colors to complement HDPE.

Structural Lumber has excellent weathering resistance; however, as with many other polyethylene, the material will fade over the service life of the product. The product requires no waterproofing, painting, staining, or similar maintenance when used in many exterior applications.

BASIC USES

Structural Lumber products are used in a variety of commercial and marine applications and are often the product of choice for exterior applications where resistance to salt and fresh water, marine borers, and other environmentally harsh conditions is required. Due to the unique composition of TRIMAX®

Structural Lumber, the product can be used for a number of structural members in commercial and shoreline timberwork. It is well suited for:

- Deck and dock planks
- Sheet piling
- Piling
- Channel markers
- Waste Timbers
- Canals
- Fenders
- Piers, beams, and joists

Structural Properties

Mechanical Properties @ 70° F	Test Method	Average Value
Density, lbs / cu. in.	ASTM D611-09	0.034
Water Absorption	ASTM D570-06	< 0.1
Modulus of Rupture (MOR)	ASTM D6109-05	4,134 psi
Modulus of Elasticity (MOE)	ASTM D6109-05	329,781 psi
Secant MOE @ 1% Strain	ASTM D6109-05	288,751 psi
Compression Parallel to Grain	ASTM D198-05	3,716 psi
Compression Perpendicular to Grain	ASTM D143-04	2,516 psi
Shear Strength	ASTM D143-04	1,828 psi
Tensile Strength	ASTM D198-05	3,876 psi
Durometer Hardness	ASTM D2240-05	68.2
Abrasion Resistance	ASTM D4660-10	42 mg
Chemical Resistance	ASTM D543-06	5%
Tensile Properties	ASTM D638-10	3650 psi
Coefficient of Friction (Dry)	ASTM D1067	0.55
Coefficient of Thermal Expansion	ASTM D6341-88	0.00021
Screw Withdrawal	ASTM D1781-06	938 lbf/in
Flame spread	ASTM E84	Class C

- 1 1/2" x 5 1/2" TRIMAX® profile used in testing data at various lengths required by the test method noted
- Lower density may occur in larger cross sections
- The above testing was performed by an independent 3rd party testing agency in January 2012.



LIMITATIONS

This type of plastic lumber product has a significantly higher modulus of elasticity (MOE) than conventional forms of plastic lumber. It is important to evaluate the suitability of this product for specific uses. It is recommended that an engineering study be performed prior to use of Structural Lumber products for structural applications. Building code regulations vary by region, so all users should consult local building and safety codes prior to installation for specific requirements.

INSTALLATION

Structural Lumber can be fabricated and installed with the same tools used to work wood lumber. The product will cut and drill very cleanly, as there is no grain to split or chip, or knots to bind tools and bend fasteners. It is reinforced with glass fibers, and precautions should be taken when fabricating this product. Maintain adequate ventilation when generating fabrication dust, and personal respiratory protection such as dust masks should be employed during fabrication, as well as safety glasses or goggles.

Pilings and sheet piling products, can be driven with pile-driving equipment such as vibratory hammers, land-based or barge-mounted drop hammers, or waterjets. For sheet piling installations, backfill soils should always be analyzed to determine that the proper amount of force would be exerted on the sheet piling system. For shoreline timberwork applications, Structural Lumber is used with conventional hardware such as stainless or galvanized bolts, tie rods, nuts, washers, and anchor systems.

When using Structural Lumber for decking, joist spacing should be in accordance with the span tables. Multiple-span data at 120°F or less are presented here:

Structural Allowable Live Load (psf), Multiple Spans, at 120° F or less:	12' Span	16' Span	24' Span
Deflection Limit			
Structural 2X Decking Joist (l = 1.50')			
L/360	2190 PSF	927 PSF	275 PSF
L/240	3000 PSF	1281 PSF	412 PSF
L/180	3000 PSF	1618 PSF	550 PSF

*Load limited by allowable stress of 1000 psi.

Note: Table provides limiting uniform load present on three spans in pounds per square foot (psf) based on noted deflection criteria.

Recommended standard is to limit live load deflection for floors to L/360 and to limit total deflection (dead + live load) to L/240. Designers may choose less restrictive or more restrictive criteria for a given application. Except for very unusual and heavy loading, deflection criteria will control allowable plank span.

Deflection determination is based on a modulus of elasticity equal to 325,000 psi at 70° Fahrenheit.

Technical Services: Technical inquiries should be directed to RENEW Plastics at 1-800-666-5207 or visit our website at <http://www.trimaxlp.com>

Updated 2/28/13

Complaint

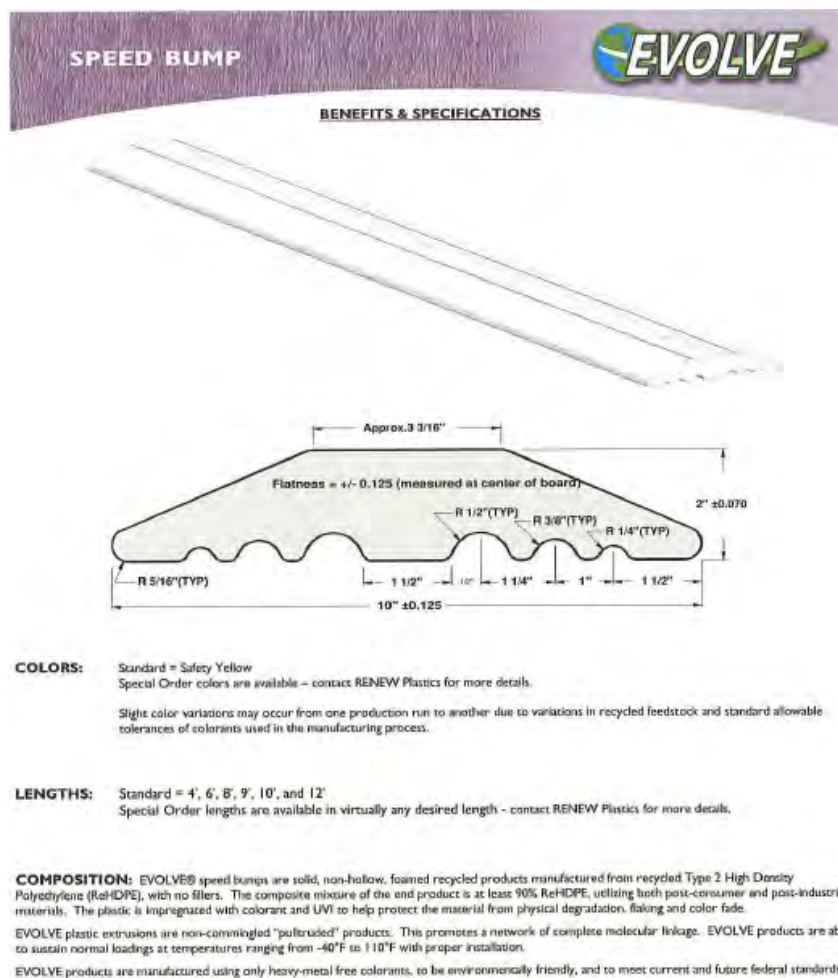
Exhibit C

TRIMAX Structural Lumber

- **TRIMAX is a Plastic (HDPE)-fiberglass blend**
 - The plastic component is recycled
 - The product is recyclable & CONTAINS NO WOOD
 - It resists stains, mold and spotting like EVOLVE®
- **TRIMAX is great for:**
 - Deck / dock substructures
 - Posts
 - Benches and Bleachers
 - Fencing
 - And more
- **Call your representative or customer service for information**

1

Complaint

Exhibit D

112 Fourth Street • P.O. Box 480 • Luxemburg, WI 54217-0480
Phone (920) 845-2326 or (800) 666-5207 • Fax (920) 845-2335 • www.renewplastics.com

RENEW
PLASTICS

Complaint

Exhibit E

		Must Widely Accepted and Trusted	
ICC-ES Evaluation Report		ESR-2497	
DIVISION: 06—WOOD AND PLASTICS Section: 06500—Structural Plastics		Issued July 1, 2009 <i>This report is subject to re-examination in one year.</i>	
REPORT HOLDER: RENEW PLASTICS, A DIVISION OF N.E.W. PLASTICS CORPORATION 112 4 TH STREET POST OFFICE BOX 480 LUXEMBURG, WISCONSIN 54217-0480 (920) 846-2326 www.renewplastics.com		A Subsidiary of the International Code Council®	
EVALUATION SUBJECT EVOLVE® PLASTIC LUMBER DECKING (ALSO KNOWN AS PERMA-POLY DECKING)		inch (25.4 by 140 mm), 1-inch-by-3-inch (25.4 by 152 mm) tongue and groove, 1 1/2-inch-by-3 1/2-inch (38 by 89 mm), 1 1/2-inch-by-5 1/2-inch (38 by 140 mm) and 1-inch-by-1 1/4-inch (25.4 by 295 mm) solid profiles. See Figure 1 for typical cross sections.	
1.0 EVALUATION SCOPE Compliance with the following codes: ■ 2006 International Building Code® (IBC) ■ 2006 International Residential Code® (IRC) Properties evaluated: ■ Structural ■ Durability ■ Surface-burning characteristics		3.2 Durability: When subjected to weathering, insect attack, and other decaying elements, the material used to manufacture EVOLVE® decking is equivalent in durability to preservative-treated or naturally durable lumber when used in locations described in Section 2.0 of this report. The deck boards have been evaluated for structural use when exposed to temperatures from -20°F to 125°F (-29°C to 52°C).	
2.0 USES The EVOLVE® (also known as Perma-Poly) Plastic Lumber Decking is limited to exterior use applications as deck boards for balconies, porches and decks of one- and two-family dwellings of Type V-B (IBC) construction and dwellings constructed in accordance with the IRC.		3.3 Surface-burning Characteristics: When tested in accordance with ASTM E 84, the deck board products have a flame-spread index no greater than 200.	
3.1 General: EVOLVE® or Perma-Poly Plastic Lumber Decking is made of a plastic composite material that consists of 90 percent recycled high-density polyethylene (HDPE), with the remaining 10 percent being foaming agents and color with ultraviolet inhibitors. The deck boards are manufactured by an extrusion process in the colors black, dove grey, dark green, weatherwood, cherrywood and white. The deck boards are manufactured in 1/4-inch-by-3 1/2-inch (19 by 89 mm), 3/4-inch-by-5 1/2-inch (19 by 140 mm), 1/4-inch-by-6-inch (19 by 152 mm) tongue and groove, 1-inch-by-5 1/2-inch (25.4 by 140 mm), 1-inch-by-3-inch (25.4 by 152 mm)		4.0 DESIGN AND INSTALLATION 4.1 General: Installation of the deck boards must comply with this report and the manufacturer's published installation instructions. The manufacturer's published installation instructions must be available at the jobsite at all times during installation. When the manufacturer's published installation instructions differ from this report, this report governs.	
4.2 Design (Structural): When used as a deck board, EVOLVE® decking products have an allowable capacity, when installed at a maximum center-to-center spacing of supporting construction, as prescribed in Table 1.		4.3 Installation: The end-to-end gap of the deck boards must be 1/16 inch (1.6 mm) for every 20°F (11°C) of difference between the installation temperature and the hottest anticipated temperature after installation. A minimum 1/8-inch (3.2 mm) gap must be provided between deck board edges. The end of each deck board must be supported by a joist. Double joists are required where decking butt-joints occur. The EVOLVE® deck boards must be attached at each joist with two No. 7 by 2 1/2-inch-long (57 mm) corrosion-resistant screws. Minimum fastener edge and end distances must be 1 inch (25.4 mm).	

ICC-ES Evaluation Reports are not to be construed as representing contributions of any other authorities not originally intended, nor are they to be construed as an endorsement of the subject of the report or a recommendation for its use. There is no warranty by ICC Evaluation Service, Inc., express or implied, in writing or otherwise, for the report or its use, products covered by the report.

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Page 1 of 6

Complaint

ESR-2487 | Most Widely Accepted and Trusted

Page 2 of 5

5.0 CONDITIONS OF USE

The EVOLVE® decking described in this report complies with, or is a suitable alternative to what is specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

- 5.1 The EVOLVE® (also known as Perma-Poly) Plastic Lumber Decking is limited to exterior use applications as deck boards for balconies, porches and decks of one- and two-family dwellings of Type V-B (IBC) construction and dwellings constructed in accordance with the IRC.
- 5.2 Balconies constructed on one- and two-family dwellings in accordance with the IBC and rated for 60 psf (2874 Pa) must not exceed 100 square feet (9.29 m²) in total area.
- 5.3 The use of EVOLVE® deck boards as stair treads is outside the scope of this report.
- 5.4 Installation must comply with this report, the manufacturer's published installation instructions and the applicable code. When the manufacturer's published installation instructions differ from this report, this report governs.
- 5.5 The use of deck boards as a component of a fire-resistance-rated assembly is outside the scope of this report.
- 5.6 Only those fasteners and fastener configurations described in this report have been evaluated for installation of the EVOLVE® deck boards. The compatibility of the fasteners with the supporting construction, including chemically treated wood, is outside the scope of this report.
- 5.7 Adjustment factors outlined in the AF&PA National Design Standard and applicable codes do not apply

to the allowable capacity and maximum spans for EVOLVE® deck boards.

- 5.8 The EVOLVE® decking must be fastened to supporting construction. Where required by the code official, engineering calculations and construction documents consistent with this report must be submitted for approval. The calculations must verify that the supporting construction complies with the applicable building code requirements and is adequate to resist the loads imparted upon it from the products and systems discussed in this report. The documents must contain details of the attachment to the supporting structure consistent with the requirements of this report. The documents must be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed.

- 5.9 The EVOLVE® decking is manufactured in Luxemburg, Wisconsin, under a quality control program with inspections by Intertek Testing Services Inc. (AA-690).

6.0 EVIDENCE SUBMITTED

Data in accordance with the ICC-ES Acceptance Criteria for Deck Board Span Ratings and Guardrail Systems (Guards and Handrails) (AC174), dated February 2006 (editorially revised April 2008).

7.0 IDENTIFICATION

The EVOLVE® decking described in this report is identified by a stamp on each individual piece or on the packaging. The stamp includes the manufacturer's name (RENEW Plastics), the product name (EVOLVE® decking), the name of inspection agency (Intertek Testing Services) and the ICC-ES evaluation report number (ESR-2487).

Complaint

TABLE 1—DECK BOARD SPAN RATINGS

DECK BOARD	MAXIMUM SPAN (inches) ¹	ALLOWABLE CAPACITY (lb/ft) ²
EVOLVE® 1/2-by-3 1/2	12	100
EVOLVE® 3/4-by-5 1/2	12	80
EVOLVE® 3/4-by-6 T&G	12	60
EVOLVE® 1-by-5 1/2	15	60
EVOLVE® 1 1/4-by-3 1/2	24	80
EVOLVE® 1 1/2-by-5 1/2	24	100
EVOLVE® 1-by-6 T & G	15	100
EVOLVE® 1-by-11 1/4 Bull Nose (used as deck board only)	15	100

For Sfr: 1 inch = 25.4 mm; 1 lb/ft² = 47.9 Pa.

¹Maximum span is measured center-to-center perpendicular, of the supporting construction.
²Maximum allowable capacity is adjusted for durability. No further increases are permitted.
³Under the IBC, deck boards not rated for at least 100 lb/ft² are limited to 100 square feet (9.29 m²) in total area.

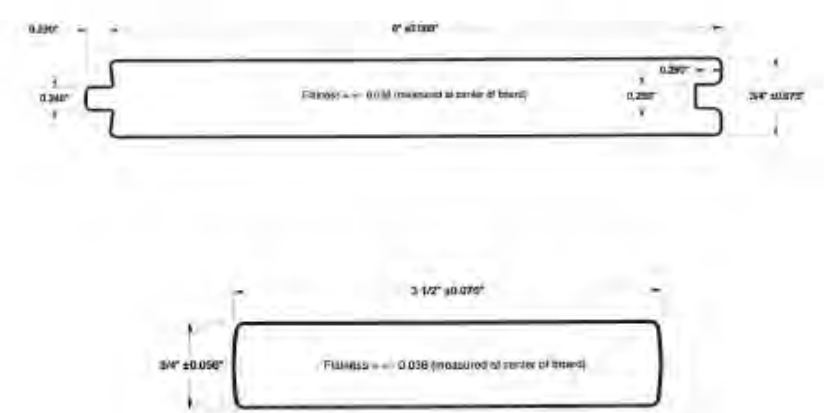


FIGURE 1—DECK BOARD PROFILES

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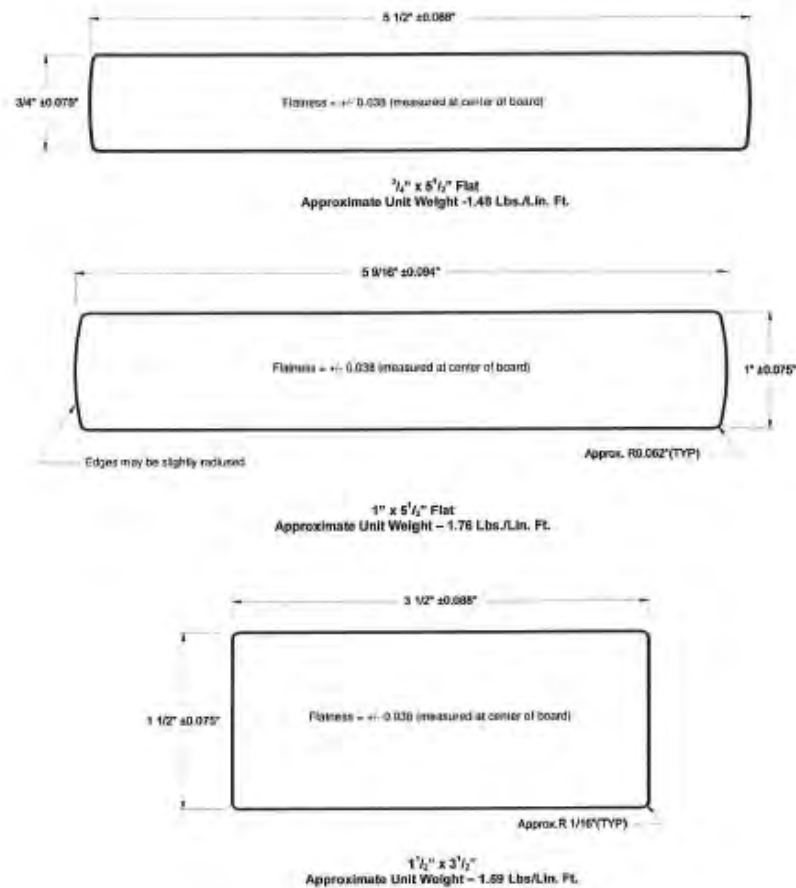


FIGURE 1—DECK BOARD PROFILES (Continued)

Complaint

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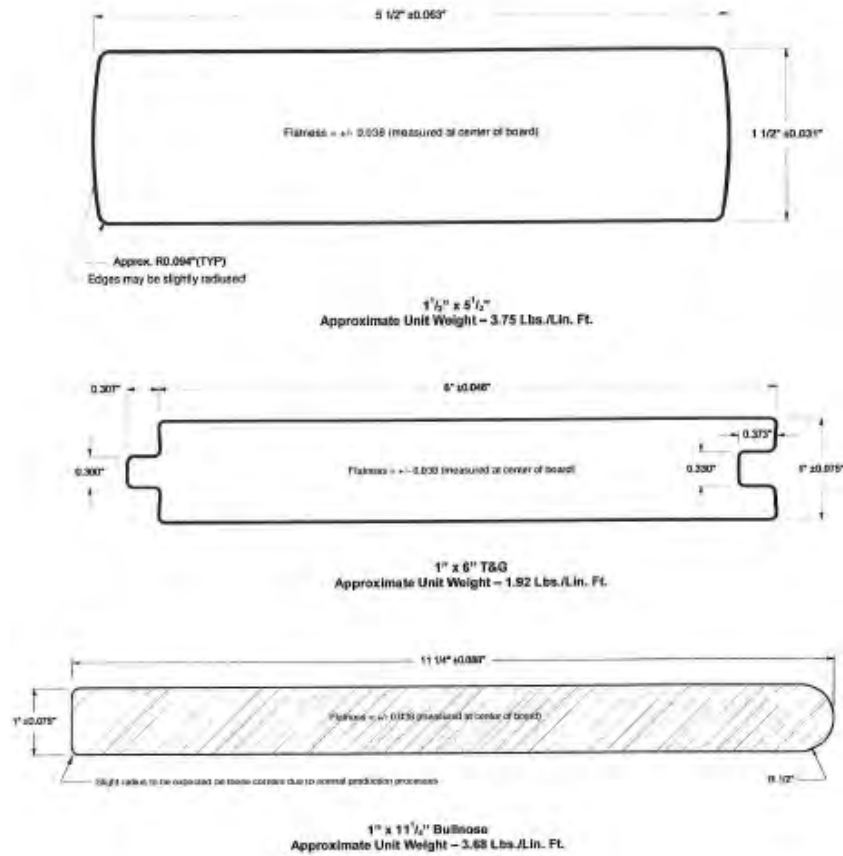


FIGURE 1—DECK BOARD PROFILES (Continued)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), a statement that respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, an admission by the respondent of facts necessary to establish jurisdiction for purposes of this action, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

- 1 Respondent N.E.W. Plastics Corp., also doing business as Renew Plastics, is a Wisconsin corporation with its principal office or place of business at 112 Fourth Street, Luxemburg, Wisconsin 54217.
2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. “Clearly and prominently” means:
1. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 2. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

Decision and Order

3. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
- B. “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
- C. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “Competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.
- E. Unless otherwise specified, “respondent” means N.E.W. Plastics Corp., a corporation, and its successors and assigns.

I.

IT IS ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not make any representation, in any manner, expressly or by implication, about:

Decision and Order

- A. The recycled content of any product or package;
- B. The post-consumer recycled content, such as milk jugs or detergent bottles, of any product or package; or
- C. The environmental benefit of any product or package;

unless such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence. For any representation that a product or package contains recycled content, such evidence must show that any recycled content in such product or package is composed of materials that have been recovered or otherwise diverted from the waste stream.

II.

IT IS FURTHER ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not represent, in any manner, expressly or by implication, that any such product or package is recyclable, unless:

- A. The entire item, excluding minor incidental components, can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item;
- B. Recycling facilities that accept the item for recycling are available:
 - 1. to a substantial majority (at least sixty (60) percent) of consumers or communities where the item is sold; or

Decision and Order

2. to less than a substantial majority (at least sixty (60) percent) of consumers or communities where the item is sold and respondent discloses, clearly and prominently and in close proximity to the representation, the limited availability of recycling for the item and the extent to which it is limited, such as by disclosing the percentage of consumers or communities that have access to facilities that recycle such item;

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence.

Provided, if respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package that is partially recyclable, represents that such product or package is recyclable, respondent must disclose, clearly and prominently and in close proximity to the representation, the part or portion of the product or package that is recyclable.

III.

IT IS FURTHER ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, shall not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact. For the purposes of this Part, “means and instrumentalities” means any information, including, but not necessarily limited to, any

Decision and Order

advertising, labeling, telemarketing scripts, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any product or package, in or affecting commerce.

IV.

IT IS FURTHER ORDERED that respondent shall deliver as soon as practicable, but in no event later than thirty (30) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A, showing the date of delivery, to all of respondent's retailers and distributors, and all other entities to which respondent provided point-of-sale advertising for the products identified in Attachment A. The notice required by this paragraph shall not include any document or enclosures other than those referenced in the notice and may be sent to the principal place of business of each entity.

V.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

Decision and Order

VI.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

VII.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “N.E.W. Plastics Corp., File No. 132 3126, Docket No. C-4449.”

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all reports required by this Part shall also be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “N.E.W. Plastics Corp., File No. 132 3126, Docket No. C-4449.”

IX.

This order will terminate on April 3, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order’s application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order

Analysis to Aid Public Comment

will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from N.E.W. Plastics Corp., a corporation (“Respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter addresses allegedly deceptive green claims that Respondent made while promoting two brands of plastic lumber products, Evolve and Trimax, to retailers, independent distributors and end-use consumers. According to the FTC complaint, Respondent marketed (1) Evolve products as made from 90% or more recycled content; (2) Trimax products as made from mostly post-consumer recycled content; and (3) both Trimax and Evolve as recyclable. The complaint alleges first that each of these claims is false and misleading. It also alleges that Respondent did not possess or rely upon a reasonable basis to substantiate these representations. Finally, it alleges that Respondent provided its retailers and distributors with deceptive promotional materials, *i.e.*, the means and instrumentalities to deceive consumers. Thus,

Analysis to Aid Public Comment

the three-count complaint alleges that Respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits N.E.W. from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims (“Green Guides”), 16 C.F.R. § 260.13(b), Part I specifically requires N.E.W. to substantiate recycled content claims by demonstrating that such recycled content is composed of materials that were recovered or otherwise diverted from the waste stream.

Part II prohibits N.E.W. from making an unqualified claim that any product or package is recyclable unless: (1) the item, excluding minor incidental components, can be recycled in an established recycling program, and (2) recycling facilities that accept the item are available to at least 60% of consumers or communities where it is sold. If recycling facilities are available to fewer than 60%, consistent with the Green Guides, 16 C.F.R. § 260.12(b), Part II requires N.E.W. to qualify its claim regarding the availability of recycling facilities. Part II requires such claims to be true, not misleading, and substantiated by competent and reliable evidence. It further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Finally, Part II provides that if Respondent promotes as recyclable an item that is only partially recyclable, Respondent must disclose the part or portion of the product or package that is recyclable.

Part III prohibits N.E.W. from providing others with the means and instrumentalities to make any false, unsubstantiated, or otherwise misleading representation of material fact regarding any product or package.

Analysis to Aid Public Comment

Part IV requires N.E.W. to deliver a letter to its distributors and retailers that instructs them to stop using Evolve and Trimax plastic lumber advertising and marketing materials provided by N.E.W. prior to December 2013. This requirement seeks to ensure that deceptive claims will be entirely removed from the market.

Parts V through IX are reporting and compliance provisions. Part V requires Respondent to keep (and make available to the Commission on request): copies of advertisements and promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part VI requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and make available to the FTC all acknowledgments of receipt of the order. Part VII requires notification to the FTC of changes in corporate status. Part VIII mandates that Respondent submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part IX is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**COMMUNITY HEALTH SYSTEMS, INC.,
AND
HEALTH MANAGEMENT ASSOCIATES, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4427; File No. 131 0202
Complaint, January 21, 2014 – Decision, April 11, 2014*

This consent order addresses the \$7.6 billion acquisition by Community Health Systems, Inc. (“CHS”) of certain assets of Health Management Associates, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The consent order requires CHS to divest the Riverview Regional Medical Center and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center and all associated operations and businesses in and around Hartsville, South Carolina.

Participants

For the *Commission*: Katie Ambrogio, Maggie DiMoscato, Michelle Fetterman, Matthew McDonald, and Jennifer Schwab.

For the *Respondents*: Mark Kovner and Bilal Sayyed, Kirkland & Ellis; and Steven Bernstein and Vadim Brusser, Weil Gotshal.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Community Health Systems, Inc. (“CHS”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Health Management Associates, Inc. (“HMA”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.