

# Home Depot, Lowe's ordered to pay fines to county

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The Consumer and Environmental Protection Unit of the Ventura County District Attorney's office has settled a civil action against Lowe's and Home Depot regarding their water heater installation services, officials said last week.

Earlier this month, a civil complaint was filed in Ventura County Superior Court alleging that Lowe's and Home Depot had collected permit fees from purchasers of their water heater installation services, but then failed to use those funds to pull the permits or arrange for final inspections by building officials.

In Ventura County, a building permit is required in order to lawfully install or replace a water heater.

According to Mitch Disney, senior deputy district attorney, Ventura County's Consumer and Environmental Protection Unit received a complaint from Jack Phillips, the former head of the Ventura County Building and Safety Division, who, acting as a citizen, had purchased a water heater from Lowe's in Ventura along with the installation services.

When Phillips checked to see whether a permit had been pulled, he found that there was none. Phillips then found out from another building and safety official that a similar oversight had occurred in Thousand Oaks with Home Depot.

Through an investigation, the unit found that between December 2003 and March 2007, Lowe's sold 422 water heater installations and collected related permit fees at its stores in Simi Valley and Ventura. Of these installations, 86 were performed without pulling permits, even though customers had paid for the service. In 104 of the 422 installations, Lowe's collected amounts higher than the fees charged by the permitting agency where the unit was to be installed. Overcharges ranged from \$1 to \$40.50.

Lowe's also failed to advise the 422 homeowners that they needed to schedule an inspection, Disney said.

"That's part of the duty of the installer, to make sure that it's inspected either by (the company) scheduling the inspection or at least notifying the homeowner to schedule the inspection," Disney said. Between January 2003 and June 2007, Home Depot sold 3,492 water heater installations and collected related permit fees ranging from \$14 to \$71 per installation at stores in Simi Valley, Camarillo, Oxnard and Thousand Oaks. Fewer than 300 building permits were actually obtained using the collected funds.

Stephen Holmes, spokesman for Home Depot, said the company used a plumbing contractor who failed to get the required permits.

"We believe we had a reasonable expectation that our plumbing contractor—because he was paid and because he was under contract to us—would obtain the permits, but he didn't do that," Holmes said, adding that Home Depot no longer uses the contractor.

"Although we didn't profit from this, because we paid those (permit) fees to our third-party plumbing contractor, we still accept responsibility for it," Holmes said.

There was no evidence that the installations without permits caused harm to consumers or their property.

Despite the large number of violations by both home improvement companies, the investigating unit did not receive any other citizen complaints other than the two that prompted the investigation.

"In certain types of violations of law, this being one good example, people don't know that they've been wronged," Disney said. "The homeowner assumes the contractor is taking care of (pulling the permit)."

After conducting the investigation, which began in late 2006, Disney said the county held negotiations with representatives from the two companies to discuss the complaint and how to settle it.

"If it's a legitimate business with a likelihood that they will take responsibility, then after we develop the case . . . we will offer to meet with them and avoid litigation by making an offer to resolve the case," Disney said. Without admitting or denying liability—the equivalent of entering a "no contest" plea in a criminal case—both Lowe's and Home Depot agreed to an injunction requiring them to comply with California's unlawful business practices law and to meet all building code permit requirements.

Holmes said Home Depot will now require their thirdparty contractors to show proof that a permit was pulled before the contractors are paid their installation and permitting fees.

Lowe's and Home Depot already have begun to acquire building permits for all customers who paid for the permits but didn't receive them.

"Both of the companies are making good on all the permit fees they collected," Disney said, noting that most of the permits have been obtained at this point. Lowe's will refund overcharges to Ventura County consumers, and pay \$150,000 in civil penalties and investigative costs. Home Depot will pay \$415,320 for penalties and educational programs.

The home improvement store also is offering a \$25 gift card to customers to encourage them to get their installations checked.

If any of the installations didn't pass inspection by building officials, the company that sold the job will pay for an authorized installer to bring the work into compliance.

Disney said the D.A.'s office is pleased with the outcome of the case.

"We wouldn't have settled the case if we thought that it was not acceptable," he said. "We thought it was within the boundaries of what a court might award, and we got full restitution for customers, which is the most important aspect."

The *Acorn* was unable to reach Lowe's for comment at press time.