

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

) Docket No. TSCA-07-2010-0014

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)
THERMAL KING WINDOWS, INC.)
Lexexa, KS)

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)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Thermal King (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by

failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to Title IV (15 U.S.C. 2681-2692) of TSCA

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Thermal King Windows, Inc., 14368 W. 96th Terrace, Lenexa, Kansas.

Section III

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 406(b) of the law directed EPA to issue regulations requiring that compensated renovators distribute an approved lead information pamphlet to owners and occupants of housing constructed before the phase out of residential lead-based paint use in 1978 before beginning renovations. The regulations became effective on June 1, 1999 and are codified at 40 C.F.R. Part 745 Subpart E. The failure or refusal to comply with the regulations is a violation of Section 409 of TSCA.

Section IV

Violation

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

7. Respondent is and at all times referred to herein was a "person" within the meaning of TSCA.

8. Respondent is a "renovator" who performed "renovations" as defined by 40 C.F.R. § 745.83 for compensation.

9. Respondent performed renovations on properties at: 5808 Appleton, Raytown, Missouri on or about September 12, 2005; 10404 East 65th Street, Raytown, Missouri on or about July 7, 2007; 4633 North Holly Court, Kansas City, Missouri on or about July 17, 2009; 4617 North Holly Court, Kansas City, Missouri; 4636 Holly Court, Kansas City, Missouri on or about October 29, 2007; and, 9363 East 70th Terrace, Raytown, Missouri on or about November 27, 2007. These properties were constructed before 1978.

10. These properties are "target housing" as defined by 40 C.F.R. § 745.103.

11. Respondent failed to provide the owners and/or occupants of the properties listed in Paragraph 9, above, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property.

12. Respondent's failure to perform the acts indicated in paragraph 11 above are violations of 40 C.F.R. § 745.84(a) and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Consent Agreement

13. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

14. Respondent neither admits nor denies the factual allegations set forth above.

15. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

17. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart E.

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

19. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart E alleged in this document.

20. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as

provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Fourteen Thousand Dollars (\$14,000.00) plus interest. The penalty will be paid in twelve quarterly payments. The initial payment of One Thousand One Hundred and Sixty-seven Dollars (\$1,167.00) must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). Each succeeding payment of One Thousand One Hundred and Eighty-four Dollars and Twenty-one cents (\$1,184.21) will be due within ninety (90) days after the previous payment. The payment shall be identified as **In the Matter of Thermal King Windows, Inc.** Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

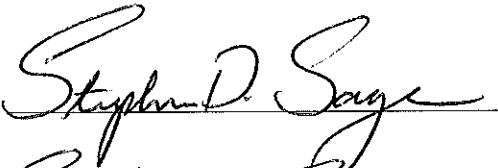
Kent Johnson, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT

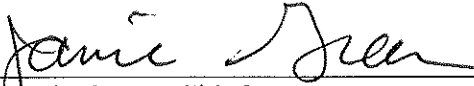
THERMAL KING WINDOWS, INC.

Date: 7/7/10

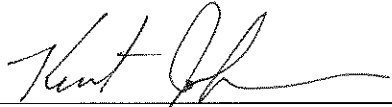
By: 
Stephen D. Sage
Print Name
President
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

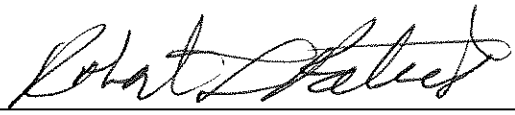
Date: 7/28/10

By: 
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 7/28/10

By: 
Kent Johnson
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: July 30, 2010 By: 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Thermal King Windows, Inc., Respondent
Docket No. TSCA-07-2010-0014

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

James Baskett
Thermal King Windows, Inc.
14368 W. 96th Terrace
Lenexa, Kansas 66215

Dated: 8/4/10


Kathy Robinson
Hearing Clerk, Region 7