

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - *KK*
REGION 7
2012 SEP 27 AM 12:32

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

In the Matter of:

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) Docket No. TSCA-07-2012-0026
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Jason Roose
3118 SW 22nd Street
Des Moines, IA 50321

Respondent

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and 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 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 F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

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 an individual named Jason Roose.

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 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide

purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Section IV

General Factual Allegations

6. Respondent is, and at all times referred to herein was a "person" within the meaning of TSCA.
7. Respondent is the "lessor" as defined by 40 C.F.R. § 745.103, for the lease of 1337 24th Street, Apt 2, Des Moines, Iowa 50311 (the Property).
8. The Property was constructed before 1978.
9. The Property is "target housing" as defined by 40 C.F.R. § 745.103.

Violations

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

Count 1

11. The facts stated in Paragraphs 1 through 10 above are herein incorporated.
12. Respondent entered into a contract to lease the target housing unit located at 1337 24th Street, Apt 2, Des Moines, Iowa 50311 on or about August 8, 2010.
13. Respondent failed to provide the lessee of 1337 24th Street, Apt 2, Des Moines, Iowa 50311 with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under contract to lease the

target housing unit.

14. Respondent's failure to perform the acts indicated in paragraph 13 above are violations of 40 C.F.R. § 745.107(a)(1), and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, 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.

Section V

Consent Agreement

15. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
16. Respondent neither admits nor denies the factual allegations set forth above.
17. Respondent his right to contest any issue of fact or law set forth above and his right to appeal the Final Order accompanying this Consent Agreement.
18. 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.
19. 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 F.
20. 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.
21. The effect of this settlement described is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 19 of this Consent Agreement and Final Order.
22. 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 F alleged in this document.

23. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and public health benefits:

Abatement of lead-based paint at the property located at 1337 and 1339 24th Street, Des Moines, Iowa, by way of installing 41 Double Hung window replacements in accordance with the SEP Work Plan that is attached to this document and incorporated by reference. In accordance with Iowa state regulations, following the completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

24. The total expenditure for the SEP shall be not less than Ten Thousand Eighty Dollars (\$10,080) and the SEP shall be completed no later than 120 days from effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

25. Respondent agrees that the abatement work on the SEP project referenced in Paragraph 23 above will be performed by entities licensed and/or certified by the state of Iowa to perform lead-based paint abatement activities. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 23 above receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project including the EPA approved SEP Work Plan, if applicable. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

26. Within thirty (30) days of the effective date of the Final Order, and prior to beginning work on the SEP, Respondent shall send a notice to the Iowa Department of Public Health, at the contact listed in paragraph 27 below, informing the state of Iowa of Respondent's

intent to perform this lead-based paint abatement SEP and requesting procedural information pertaining to performance of the SEP. A copy of this letter shall be sent to EPA at the contact listed in paragraph 27, and to the Polk County Health Department, Lead Poisoning Prevention, 1907 Carpenter, Des Moines, IA 50314.

27. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders, receipts or canceled checks; and
- c. The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- d. The report shall be directed to the following:

As to EPA:

Candace Bias
Life Scientist
Toxics and Pesticides Branch
Water, Wetlands and Pesticide Division
11201 Renner Boulevard
Lenexa, KS 66219.

As to the state:

Kane Young
Iowa Department of Public Health
321 E. 12th Street
Des Moines, IA 50319-0075

28. Respondent agrees to the payment of stipulated penalties as follows:
- a. In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (1) If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Ten Thousand Eighty Dollars (\$10,080).
 - (2) If the SEP is satisfactorily completed, but the Respondent spends less than Ten Thousand Eighty Dollars (\$10,080) on the SEP, Respondent shall pay as a stipulated penalty to the United States the amount of Ten Thousand Eighty Dollars (\$10,080) minus the amount that Respondent can demonstrate it spent upon the satisfactorily completed SEP.
 - b. If Respondent fails to timely and completely submit the SEP Completion Report required by this CAFO, Respondent shall be liable for and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100.00) for each day after the due date until a complete report is submitted.
 - c. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP.
 - d. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other

resolution under this CAFO.

e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 1 the Final Order portion of this Consent Agreement and Final Order.

29. Respondent certifies that he is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that he has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

30. Respondent further certifies that, to the best of his knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. For federal income tax purposes, Respondent agrees that he will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

32. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was

undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

33. Respondent understands that his failure to timely pay any portion of the civil penalty described in Paragraph I of the Final Order below or any portion of a stipulated penalty described in this Consent Agreement and 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 One Thousand One Hundred Twenty Dollars (\$1,120) within sixty (60) days of the effective date of this Final Order. 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
11201 Renner Boulevard
Lenexa, KS 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

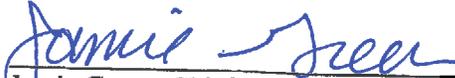
RESPONDENT:

Date: September 26, 2012

Jason Roose
Jason Roose

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/27/12



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

Date: 9/27/12



Raymond C. Bosch
Office of Regional Counsel

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

Date: Sept. 27, 2012



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7



Jason Roose

515-490-5325

PROPERTY OWNER-NAME and PHONE (Home/Cell) and E-mail address

1337 & 1339 24th St, Des Moines, IA

Property Owner Mailing Address - City, State and Zip

WINDOWS AND MORE

3060 100th St
 Urbandale, IA 50322
 Phone: 515-276-8506
 Fax: 515-278-5083

Heath Johnson
 Sales Rep.

515-554-1325
 Cell Phone

7/16/12
 Proposal Date

Classic Series Double Hung _____ **41**
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and
 Frames with Double Pane, Double Strength Glass (up to 120 U)
 with Low E2 and Argon Gas
Go Green Energy Package
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and
 Frames with Double Pane, Double Strength Glass with Low E2,
 Argon Gas, and Ultra Spacer (up to 120 U)

Enhanced Green Energy Package _____
 Stimulus Energy Package with Low E2, Argon Gas
 and Ultra Spacer (up to 120 U)

Specialty Windows

2-1/2" Slider (up to 101 U) _____
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and Frames with Double
 Pane, Double Strength Glass with Low E2, Argon Gas, and Ultra Spacer

3-1/2" Slider (up to 111 U) _____
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and Frames with Double
 Pane, Double Strength Glass with Low E2, Argon Gas, and Ultra Spacer

Picture Window (up to 101 U) _____
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and Frames with Double
 Pane, Double Strength Glass with Low E2, Argon Gas, and Ultra Spacer

Casement (up to 103 U) _____
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and Frames with Double
 Pane, Double Strength Glass with Low E2, Argon Gas, and Ultra Spacer

Twin Casement (up to 112 U) _____
 Premium Virgin White Vinyl Fully Fusion Welded Sashes and Frames with Double
 Pane, Double Strength Glass with Low E2, Argon Gas, and Ultra Spacer

Patio Doors

3 Ft. Sliding Patio Door _____
 6 Ft. Sliding Patio Door _____
 8 Ft. Sliding Patio Door _____
 Single Swing Door _____
 Double Swing Door _____
 Triple Swing Door _____
 French Door _____
 Custom Sliding/Sliding Door _____
 *Tan, Bronze, or Earthtone

Accessories

Low E2 & Argon Gas _____
 Low E2 & Argon Gas _____
 Flat Grids _____
 Contoured Grids _____
 Prairie Grids _____
 Tan Color _____
 Bronze Color _____
 Interior Wood Color _____
 Two Tone Grids _____
 Oriskany/Cottage Style _____
 Full Screens _____
 Factory Mull _____
 Field Mull _____
 Obscure or Tinted Glass _____
 Tempered Sash (BS) (TS) _____
 Tempered Glass (Low E2) Per SF _____
 Poly Foam Wrap _____
 Other _____
 Other _____

Additional Service

Full Capping _____
 Trim Capping _____
 Replace Brick Mold (PVC) _____
 Replace Sill (PVC) _____ **2**
 New Inside/ Outside Stops A Side _____ **30**
 Repair Wood Rot (up to 24") _____
 Remove Wood Mull _____
 Remove/Replace Blinds _____
 Remove Storms _____
 Drill Alarm Hole _____
 EPA Lead Service (inc. capping) _____
 EPA Lead Service _____ **41**
 Other _____

Total Installed Amount \$ **10,735.00**

Deposit of 50% \$ **5,367.50**

Balance Upon Install \$ **5,367.50**

Window and Warranty Information

4600 Series Window - Fusion Welded - Sash & Frame

- > Ultra Spacer
- > 1" Double Strength Cardinal Glass Standard (Best in the industry) 2 Low-E Options Available
- > Low-E Glass - Argon Filled
- > 100% Virgin Vinyl Custom Veka Extrusions 0.090 Thickness
- > Stainless Steel Constant Force Balance System
- > Full Length Extruded Lift Rail
- > Triple Fin Mylar Weather Strip
- > Sloped Sill and One-Way Interval Drainage System
- > Dual force resistant cam locks meet new AAMA requirements
- > LIFETIME GLASS BREAKAGE
- > LIFETIME LABOR
- > Meets Tax Energy Credit

1200 Series Window - Fusion Welded - Sash & Frame

- > Intercept Warm-Edge Spacer
- > 3/4" Double Strength Insulated Glass
- > 100% Virgin Vinyl
- > Stainless Steel Constant Force Balance System
- > Dual weatherstripping virtually eliminates drafts for a more energy efficient home
- > Multi-chambered frame and sash provide increased rigidity and energy efficiency
- > 5 YEAR GLASS
- > 5 YEAR FRAME
- > 1 YEAR LABOR
- > Low-E Glass - Argon Filled

Thanks again for having us out and be sure to call me with any questions!!

Ask us about our Siding, Roofing & Deck Packages!!!

Remember.... BEST WINDOW!!! BEST PRICE!!! BEST CHOICE!!!

IN THE MATTER OF Jason Roose, Respondent
Docket No. TSCA-07-2012-0026

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Orders were sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

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

Copy by First Class Certified Mail to:

Jason Roose
3118 SW 22nd Street
Des Moines, Iowa 50321

Dated: 9/27/12



Kathy Robinson
Hearing Clerk, Region 7