

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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/or public health benefits. Respondent will perform a window replacement SEP, per EPA's Renovation, Repair, and Painting (RRP) Rule, to address potential lead-based paint hazards at Respondent's rental property. The window replacement SEP will reduce potential lead-based paint hazards in said property by replacing the property's original windows. The window replacement SEP will take place at 803 N. Taylor, El Dorado, Kansas. The total expenditure for the SEP shall be not less than \$5,040, and the SEP shall be completed no later than one hundred and eighty (180) days from the effective date of the modified Final Order. Within thirty (30) days of the effective date of the modified Final Order, or such other time as EPA deems appropriate under the circumstances, and prior to beginning the SEP

provide a Work Plan for approval by EPA. The Work Plan shall detail the activities to be undertaken at the property, including the number of windows, costs of the materials, costs of the labor, and estimated completion date. The Work Plan shall be directed to the following:

Candace Bias, Case Review Officer
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

9. Upon EPA approval of the Work Plan, the SEP shall be completed in accordance with paragraphs 10-19 below.

10. Within ten (10) days of the EPA's approval of the Work Plan, Respondent will provide EPA with a copy of the letter sent to the Kansas Department of Health and Environment informing the state of Respondent's intent to perform the SEP and requesting procedural information pertaining to performance of the SEP.

11. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

12. Respondent agrees that the window replacement work on the SEP project will be performed by entities licensed and/or certified by the State of Kansas to perform window replacement activities under the RRP Rule. Respondent is responsible for ensuring that the entity or entities performing the SEP receive a copy of this Consent Agreement and Final Order and the EPA-approved SEP Work Plan. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this Consent Agreement.

13. 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:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The worksheet/record keeping checklist, as required by the RRP rule; and
- (iv) 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.

The report shall be directed to the following:

As to EPA:

Candace Bias, Case Review Officer
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

As to the state:

Thomas Langer
Kansas Department of Health and Environment

1000 SW Jackson Suite 330
Topeka, KS 66612-1274

14. In the event that Respondent fails to comply with any of the terms or provision of this Consent Agreement and Final Order relating to the performance of the SEP described in Paragraph 8 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 8 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii), for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of One Thousand, Six Hundred and Eighty Dollars (\$1,680).

(ii) If the SEP is not completed in accordance with Paragraph 8, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with Paragraph 8, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference of the amount spent and One Thousand, Six Hundred and Eighty Dollars (\$1,680)

(iv) If the SEP is completed in accordance with Paragraph 8, and the

Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

15. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this Consent Agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within one hundred and eighty (180) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying the EPA Region 7 contact identified in Paragraph 13 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this Consent Agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

16. Respondent certifies that it 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 Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

17. For federal income tax purposes, Respondent agrees that it will neither capitalize

into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

18. 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."

19. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 14 above 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.

[end of replacement Consent Agreement paragraphs]

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 First Modification to Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. The original Consent Agreement is modified by the replacement Consent Agreement paragraphs above, and Respondent shall complete the Supplemental Environmental Project in

accordance with the provisions set forth in the replacement Consent Agreement paragraphs and shall be liable for any stipulated penalty for failure to complete such project as specified in the replacement Consent Agreement paragraphs.

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

3. The effective date for the replacement Consent Agreement shall be the date set forth below for the effective date of this Final Order.

RESPONDENT:
Donges Properties, LLC

Date 6-1-12

By: 

NATALIE DONGES
Print Name

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/8/12

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

Date: 6/8/12

By Robert W. Richards
Robert W. Richards
Assistant Regional Counsel
Office of Regional Counsel

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

Date: June 19, 2012 

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

IN THE MATTER OF Donges Properties, LLC , Respondent
Docket No. TSCA-07-2012-0009

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
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:

Ms. Natalie Donges
Donges Properties, LLC
2873 Southeast U.S. Highway 54
El Dorado, Kansas 67042

Dated: 6/19/12



Kathy Robinson
Hearing Clerk, Region 7