



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

November 27, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7668 0639

Mr. Christopher T. Nowotarski
Stone Pogrund & Korey LLC
1 E. Wacker Drive, #2610
Chicago, Illinois 60601

Consent Agreement and Final Order in the Matter of
Felco Factory Direct, LLC., Docket No. TSCA-05-2013-0002

Dear Mr. Nowotarski:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on November 27, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$45,000 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by December 27, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morris".

Julie Morris
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2013-0002
)	
Feldco Factory Direct, LLC)	Proceeding to Assess a Civil
Des Plaines, Illinois,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
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NOV 27 2012

Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Feldco Factory Direct, LLC, a limited liability corporation doing business in the States of Illinois, Indiana and Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et. seq.*, by adding Title IV – Lead Exposure Reduction. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), required the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

11. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary

to insure the effective implementation of TSCA Subchapter IV (TSCA §§ 2681-2692).

12. On June 1, 1998, EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule) under 15 U.S.C. § 2686 and § 2687, which was subsequently amended and recodified on April 22, 2008 at 40 C.F.R. Part 745, Subpart E, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule).

13. The PRE Rule and the information distribution requirements of the RRP Rule, at 40 C.F.R. § 745.85, promulgated pursuant to 15 U.S.C. § 2686 and § 2687, impose certain requirements prior to renovation of target housing. Each person who performs for compensation a renovation of target housing must provide a lead hazard information pamphlet to the owner and occupant of such housing or child occupied facility prior to commencing the renovation and must comply with the PRE Rule by June 1, 1999, and with the amended information distribution requirements of the RRP Rule by April 22, 2008.

14. 40 C.F.R. § 745.223 defines *common area* to mean a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

15. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Subpart E applicable to renovations of target housing performed for compensation.

16. Before December 22, 2008, 40 C.F.R. § 745.83 defines *pamphlet* to mean any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326.

17. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing

structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceilings, large surface replastering, major re-plumbing); and window replacement.

18. 40 C.F.R. § 745.83 defines *renovator* to mean any person who performs for compensation a renovation.

19. 40 C.F.R. § 745.103 defines residential dwelling to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

20. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

21. 40 C.F.R. § 745.85(a)(1) requires that the renovator performing renovation in dwelling units must provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.

22. 40 C.F.R. § 745.86(a) requires that the renovator performing the renovation must

retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.

23. 40 C.F.R. § 745.86(b)(2) requires signed and dated acknowledgments of receipt be retained as required by 40 C.F.R. § 745.86(a) for a period of 3 years and as described in 40 C.F.R. § 745.85(a)(1)(i), (a)(2)(i), and (b)(1)(i).

24. 40 C.F.R. § 745.86(b)(3) requires certificates of attempted delivery be retained as required by 40 C.F.R. § 745.86(a) for a period of 3 years and as described in 40 C.F.R. § 745.85(a)(2)(i).

25. 40 C.F.R. § 745.86(b)(4) requires certificates of mailing be retained as required by 40 C.F.R. § 745.86(a) for a period of 3 years and as described in 40 C.F.R. § 745.85(a)(1)(ii), (a)(2)(ii), and (b)(1)(ii).

26. 40 C.F.R. § 745.86(b)(5) requires records of notification activities performed regarding common areas be retained as required by 40 C.F.R. § 745.86(a) for a period of 3 years and as described in 40 C.F.R. § 745.85(b)(3) and (b)(4).

27. Under 15 U.S.C. § 2689, failing to comply with Section 406(b) of TSCA violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

28. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997, through March 15, 2004, to

\$32,500 per day of violation for violations that occurred from March 16, 2004 through January 12, 2009, and to \$37,500 for violations that occurred after January 12, 2009.

General Allegations

29. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

30. On August 29, 2008, Respondent's legal representative provided EPA with a letter indicating that for the period of July 1, 2007 through June 30, 2008, Respondent entered into numerous contracts to perform renovations, including contracts subject to the PRE Rule requirements.

31. On November 30, 2011, Complainant issued an administrative subpoena to Respondent, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgement of receipt of a pamphlet by the owners and occupants of residential housing, copies of all certificates of attempted delivery of a pamphlet, and all certificates of mailing of a pamphlet from January 1, 2007 through December 31, 2008.

32. On March 14, 2012, EPA agreed, by letter, to suspend the administrative subpoena, so that Respondent was not required to respond at that time.

33. The parties have entered into two tolling agreements to toll any applicable statute of limitations commencing on November 28, 2006.

34. Respondent has performed thousands of compensated renovations of pre-1978 housing in the States of Illinois and Wisconsin.

Count 1

35. Respondent violated Section 406(b) of TSCA and its implementing regulations by

failing to provide the pamphlet in its compensated renovations of pre-1978 housing pursuant to 40 C.F.R. § 745.85(a).

36. Respondent's failure to provide the owners of the residential dwelling units of target housing with the pamphlet and obtain from the owners, a written acknowledgement that the owners have received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovations referred to in paragraph 35, above, constitutes a violation of 40 C.F.R. § 745.85(a)(1), promulgated under 15 U.S.C. § 2686, for each renovation.

Count 2

37. Respondent violated Section 406(b) of TSCA and its implementing regulations by failing to retain and make available to EPA, if requested, all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpt. E, for a period of 3 years following completion of the renovation activities for its compensated renovations of pre-1978 housing pursuant to 40 C.F.R. § 745.86(a), including retaining signed and dated acknowledgments of receipt required by 40 C.F.R. § 745.86(b)(2); certificates of attempted delivery required by 40 C.F.R. § 745.86(b)(3); certificates of mailing required by 40 C.F.R. § 745.86(b)(4); and records of notification activities performed regarding common areas, as required by 40 C.F.R. § 745.84(b)(5).

38. Respondent's failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the renovations referred to in paragraph 37, above, constitutes a violation of 40 C.F.R. § 745.86(a), promulgated under 15 U.S.C. § 2686 and § 2687, for each renovation.

Civil Penalty

39. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$45,000. In determining the penalty

amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent's agreement to perform a supplemental environmental project. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education, Repair and Painting, and Lead-Based Paint Activities Rules* dated April 11, 2010 (Response Policy).

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

41. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Julie Morris (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mary McAuliffe
Mark Palermo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 54, below, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

45. Respondent shall complete a supplemental environmental project (SEP), as described in Paragraph 46 and Attachment A to this CAFO. The parties agree that this SEP is intended to secure significant environmental or public health protection and improvements. The SEP described in Attachment A to this CAFO is designed to protect families by abating lead-based paint hazards in a number of residential properties and day care facilities in Cook County, Illinois, by replacing windows.

46. For the SEP described in Attachment A to this CAFO, Respondent shall provide windows with a retail value of two hundred and twenty-five dollars (\$225,000) for installation in low-income pre-1978 residential properties, prioritizing properties where one or more children and/or a pregnant woman resides, and/or in day care facilities, located in Cook County, Illinois. Respondent shall provide such windows to Cook County Health and Hospitals System (Cook County) with a retail value of at least \$75,000 during each 12 months period following the effective date of this CAFO. The SEP will be conducted according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Illinois requirements, unless otherwise specifically provided in this CAFO. The SEP shall commence within 30 days of the effective date of this CAFO, and shall be completed within 36 months of the effective date of this CAFO. Respondent shall conduct the SEP in accordance with the schedule in Attachment A. Respondent may request changes to the requirements listed in Attachment A, provided Respondent (1) achieves the requirement to provide windows with a retail value of \$225,000 to Cook County for completion of the SEP as specified in this Attachment A and the CAFO, and (2) obtains prior written approval of the change(s) from EPA and Cook County. Respondent shall provide windows to Cook County that comply with the Minimum Window Specifications in Attachment A. Respondent shall include documentation of the value of windows provided in connection with the SEP as part of each SEP Periodic Quarterly Report and the SEP Completion Report referred to in Paragraphs 48 and 49, below. However, Respondent shall have no obligation to provide windows not ordered by Cook County by November 30, 2015.

47. SEP Certifications:

- a. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date it signs this CAFO.
- b. Respondent certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- c. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- d. Respondent certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance 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. The parties agree that the NFP certifying to the lack of another federal financial assistance transaction shall satisfy Respondent's obligation for reasonable inquiry under this subparagraph.

48. Respondent must submit Periodic Quarterly Reports regarding the SEP within thirty (30) days after the end of each calendar quarter while this CAFO is in effect. Each Periodic Quarterly Reports shall indicate the status of Respondent's compliance with the SEP during the preceding calendar quarter. Each Periodic Quarterly Report shall indicate the status of the work relating to the SEP, including a statement of the value for that period for the SEP, the number of windows, the retail value of each window, the addresses where such windows were installed by Cook County, a statement that the windows met the Minimum Window Specifications in Attachment A, and a statement of the value remaining for full completion of the SEP. Respondent agrees that failure to timely submit any Periodic Quarterly Report with the information required by this paragraph shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 54 below.

49. Respondent must submit a SEP Completion Report to EPA no later than 30 days after Respondent receives a report from Cook County that the SEP is complete. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems implementing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. To the best of Respondent's knowledge, a description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible). Include the number of properties from which lead was removed under the SEP.

50. Respondent must submit all notices and reports required by this CAFO by first class mail to Julie Morris of the Pesticides and Toxics Compliance Section at the address provided in paragraph 41, above.

51. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

52. Following receipt of the SEP Completion Report described in paragraph 49, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP Completion Report;
- b. There are deficiencies in the SEP as completed or in the SEP Completion Report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP Completion Report and EPA will seek stipulated penalties under paragraph 54, below.

53. If EPA exercises option b in paragraph 52.b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to EPA under paragraph 54, below.

54. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO and Attachment A, including the schedule in Attachment A, Respondent must pay a penalty of \$250,000.
- b. If Respondent satisfactorily completes the SEP according to the requirements of this CAFO, but spends less than \$225,000, Respondent must pay the difference between the amount of \$225,000, and the actual amount spent.
- c. If Respondent did not submit timely a Periodic Quarterly Report or the SEP Completion Report, Respondent must pay penalties in the following amounts for each day after each report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

55. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

56. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 40, above, and will pay interest, handling charges and penalties on overdue amounts as specified in paragraph 44, above.

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

58. Any public statement that Respondent makes referring to the SEP must include the following language, "Feldco Factory Direct, LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Feldco Factor Direct, LLC for violations of section 406 of the Toxic Substances Control Act."

59. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will

stipulate to an extension of time no longer than the period of delay.

- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

60. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk (Effective Date).

61. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

62. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

63. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state and local laws.

64. As of the date of Respondent signature of this CAFO, Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

65. The terms of this CAFO bind Respondent, and its successors and assigns.

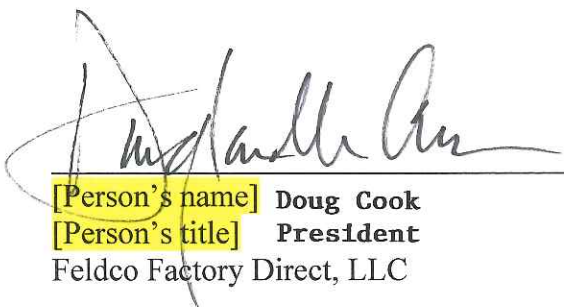
66. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

67. Each party agrees to bear its own costs and attorneys fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

Feldco Factory Direct, LLC, Respondent


10.29.12
Date



[Person's name] **Doug Cook**
[Person's title] **President**
Feldco Factory Direct, LLC

United States Environmental Protection Agency, Complainant

11/20/2012
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Feldco Factory Direct, LLC
Docket No. TSCA-05-2013-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-26-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


NOV 27 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Feldco Factory Direct, LLC., was filed on November 27, 2012 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7668 0639, a copy of the original to the Respondent:

Mr. Christopher T. Nowotarski
Stone Pogrund & Korey LLC
1 E. Wacker Drive, #2610
Chicago, Illinois 60601

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mary McAuliffe, Regional Judicial Officer, ORC/C-14J
Mark Palermo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2013-0002



In the Matter of Feldco Factory Direct, LLC
ATTACHMENT A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Cook County Health and Hospital Systems (Cook County) will identify potential low-income pre-1978 residential properties where one or more children and/or a pregnant woman resides, and/or in day care facilities in Cook County, Illinois (Target Housing). Cook County will identify specifications for each project addressing lead hazards in accordance with the United States Department of Housing and Urban Development Guidelines and State of Illinois requirements within the selected Target Housing.

Pursuant to Paragraph 46 of the Consent Agreement and Final Order (CAFO), Respondent shall provide windows with a retail value of two hundred and twenty-five thousand dollars (\$225,000) to Cook County for installation in Target Housing for completion of the supplemental environmental project (SEP). Respondent shall provide windows with a retail value of at least \$75,000 to Cook County for this SEP during each 12 month period following the effective date of the CAFO. The SEP shall be completed within 36 months of the Effective Date of the CAFO. Respondent shall detail the progress made in the Periodic Quarterly and Final SEP Completion Reports required in Paragraphs 48 and 49 of the CAFO. However, Respondent shall have no obligation to provide windows not ordered by Cook County by November 30, 2015.

Respondent shall conduct the SEP in accordance with the following schedule, which shall commence within 30 days of the Effective Date of this CAFO:

ACTIVITY	DATE
1. Cook County contractors shall use an ordering form agreed upon by Respondent and Cook County for satisfying the conditions of the SEP. Respondent will provide Cook County with windows from its "Sophia Series," as set forth below, valued at the pricing described in this Attachment A, below. In the event of a change in window manufacturers during the term of the CAFO, Respondent will provide	Ongoing

<p>the window specifications for each potential manufacturer and window line to Cook County at least 60 calendar days prior to the first order of that window line for Cook County approval. Cook County will have 60 calendar days to deny the window line and inform Respondent in writing. Respondent will only supply Cook County with windows that are approved by Cook County. Respondent shall prioritize the ordering of windows ordered by Cook County in the same manner as the ordering of windows for Respondent’s installers. Cook County will place orders with Respondent’s project manager liaison for windows on a per job basis, and will include the number, type, and size of windows, measured tip to tip, necessary for that job and any other specification identified by the Respondent to fulfill the order. During the term of this SEP, the “ready date” shall be 21 calendar days from the order date for window orders placed before Tuesday at 3:00 P.M. in any given week. Window orders that contain windows with tempered glass or other special features that would delay the “ready date” beyond 21 calendar days shall have a “ready date” no later than 30 calendar days for window orders placed before Tuesday at 3:00 P.M. in any given week. Respondent shall make windows available for pick up by Cook County’s installers at 125 East Oakton in Des Plaines, Illinois, or other agreed upon place of designation by the “ready date”. For purposes of this SEP, December 24 – January 1 of any year will not be considered calendar days.</p>	
<p>2. Respondent shall provide the agreed upon number of specified windows to Cook County.</p>	<p>At a “ready date” identified and committed to by Respondent, no later than within 30 Calendar Days of Activity #1.</p>

Respondent may request changes to the requirements listed in the preceding Table, provided Respondent achieves the requirement to provide windows with a retail value of \$225,000 to Cook County for completion of the SEP as specified in this Attachment A and the CAFO. Respondent must obtain prior written approval of the change(s) from EPA and Cook County.

Cook County will take window measurements and other necessary dimensions for the windows at the selected target housing. Respondent shall not be responsible for any inaccuracies due to improper window measurements or other dimensions. Cook County will submit these

measurements to Respondent. The windows will be made available at 125 East Oakton in Des Plaines, Illinois, at a “ready date” identified and committed to by Respondent, but no later than 30 calendar days after Cook County’s order, as set forth in the Table, above.

Respondent will supply Cook County with windows in its “Sophia Series” that meet the following Minimum Window Specifications:

COMPONENT	MINIMUM WINDOW SPECIFICATIONS
Overall Unit	Energy Star Rated
Overall Unit	Vinyl thickness .065” or greater
Overall Unit	National Fenestration Rating Council (NFRC) tested for U-factor, solar heat gain coefficient, visible transmittance and condensation resistance.
Overall Unit	Both temporary and permanent label with Certified Product Directory (CPD) number and test numbers.
Main Frame	Mitered and welded
Sash	Mitered and welded
Exterior Frame	Raised screen track
Sill	Sloped or Pocketed with Weep Holes
Meeting Rail	Interlocking. Steel reinforced over 36” in width. Two Locks when over 22” in width.
Pivot Alignment System	Pivot bars with stops
Balance system	Stainless Steel constant force ¾”. Double coils if sash is over 9 lbs.
Tilt latches	Flush-mount
Sash Removal	Tilt-in / Lift-out
Glazing bead	Dual-durometer Exterior glazed
Glass penetration into the sash	5/8”
Glass strength	Single -2.5 mm
Glass type	Clear –low-E with argon
Insulating glass thickness	¾” or larger overall
Spacer system	Intercept
Screen Frame	Rollformed or Extruded
Screen Mesh	Fiberglass or non metal screening
Screen Style	Full or half
Lift Mechanism	Extruded lift rail
Weather seals	Closed cell foam or foam filled frame. Weather seal with center strip.
Cam Lock	Dual
Vent Latch	Single or Dual

Following installation of Respondent's windows, Cook County shall make the initial response to any homeowner complaint regarding windows and/or window replacement by visiting the home to determine whether there is a defect in any window(s) supplied by Respondent. Cook County will notify Respondent's project manager liaison of any Cook County determination that a window is defective. Respondent shall provide a manufacturer's warranty on the windows as specified by the window manufacturer. Windows approved by Cook County shall have a minimum manufacturer's warranty. The warranty shall not be required to warrant the contractor's installation work or problems caused thereby. Warranty paperwork shall be part of every window order and provided to the Cook County contractor at the time of window pick-up or delivery.

Window Values (these numbers are based on general market conditions and do not reflect confidential business information of Respondent):

<u>Uninstalled Double Hung All White Window</u>		Size Limitations		
0-101 united inches	\$464.00		<u>Minimum</u>	<u>Maximum</u>
over 101 united inches	add 4.22/u.i.	Width	15 3/4"	51 1.4"
		Height	23 1/4 "	80"
tempered glass	add \$234.00			
frosted glass	add \$53.00			

<u>Uninstalled Two-Lite Slider All White Window</u>		Size Limitations		
0-101 united inches	\$576.00		<u>Minimum</u>	<u>Maximum</u>
over 101 united inches	add \$6.00/u.i.	Width	24"	77 3/4"
		Height	15 3/4"	59 3/4"
tempered glass	add \$234.00			
frosted glass	add \$53.00			

<u>Uninstalled Three-Lite Slider All White Window</u>		Size Limitations		
0-120 united inches	\$761.00		<u>Minimum</u>	<u>Maximum</u>
over 120 united inches	add \$6.00/u.i	Width	33 1/2"	126 1/4"
		Height	15 3/4"	59 3/4"
tempered glass	add \$351.00			
frosted glass	add \$79.00			

<u>Uninstalled Picture Window - All White</u>		Size Limitations		
0-101 united inches	\$698.00		<u>Minimum</u>	<u>Maximum</u>
over 101 united inches	add \$3.10/u.i.	Width	15 3/4"	105"
		Height	15 1/2"	90"
tempered glass	add \$234.00			
frosted glass	add \$53.00			

Price listed above shall be the approved price as of the effective date of this CAFO. A price increase may be requested by Respondent any time the supplier price increases. Requests for a price increase shall be submitted to Cook County in writing along with verifiable documentation from the supplier. Cook County may at its discretion verify an industry price increase from outside sources for the supplier before a price increase is approved. Cook County will have 30 days to approve or deny a price increase and will inform Respondent in writing. A price increase proposed to Cook County will not exceed the percent price increase to Respondent.

Respondent shall designate a project manager liaison to address issues that may arise during the course of this SEP. Respondent's project manager liaison shall be (subject to change by Respondent):

Liaison: Paul Baumhart, Feldco Director of Operations
 Telephone: (708) 437-4111
 Email: paulb@4feldco.com

Cook County shall designate a project liaison, who will meet monthly with the Respondent's project manager liaison in person or by telephone or e-mail, to discuss any issues that arise under this Attachment A. Cook County's project liaison shall be (subject to change by Cook County):

Liaison: Deanna Durica
Telephone: (708) 633-8054
Email: ddurica@cookcountyhhs.org

Respondent will offer instruction at 125 East Oakton in DesPlaines, Illinois, or other agreed upon location to Cook County contractors addressing any and all Cook County contractor questions and concerns on how to properly install Respondent's windows. Such instruction will be provided within 30 days of the effective date of the CAFO, and thereafter, on a quarterly basis for new contractors.

Disputes between Cook County and the Respondent concerning this Attachment A that cannot be resolved at the monthly meeting held between Respondent's project manager liaison and the Cook County project liaison shall be resolved in accordance with Paragraph 53 of the CAFO.