

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)
)
)

LARRY HARMS)
Newton, Kansas)
)

Respondent)

Docket No. TSCA-07-2009-0012

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Larry Harms (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 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 Larry Harms, 3219 S.E. 36th Street, Newton, Kansas 67114.

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 phaseout 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 217 S. Main, Newton, Kansas 67114 (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 6 through 9 above are herein incorporated.
12. Respondent entered into a contract to lease the target housing unit located at 217 S. Main, Newton, Kansas 67114, on or about February 6, 2008.
13. Respondent failed to provide the lessee of 217 S. Main, Newton, Kansas 67114, 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, 745.113, 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 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.

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. 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.

22. 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: Lead-based paint abatement work to be performed at 1504 E. 10th, 412 E. 8th, and 215 W. 12th, Newton, Kansas, to include removal and replacement of 18 lead-based painted windows with lead free windows.

23. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to the Kansas Department of Health and Environment Lead Licensing Program informing the state of Respondent's intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

24. The total expenditure for the SEP shall be not less than \$6,657 and the SEP shall be completed no later than 90 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 22 above will be performed by entities licensed and/or certified by the state of Kansas to perform lead-based paint abatement activities. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 22 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 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 final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent, or if Respondent is a corporation, an officer of the corporation:

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:

Stephven Richard, 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, Kansas 66612-1274

27. If the SEP referenced in Paragraph 22 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 100% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. 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 ninety (90) 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 26 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 agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

28. 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.

29. 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.

30. 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."

31. 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 24 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.

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 Forty-Three Dollars (\$1,043) within **thirty (30) 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:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 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

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

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.

IN THE MATTER OF LARRY HARMS
Docket No. TSCA-07-2009-0012

RESPONDENT
LARRY HARMS

Date: 4-3-09

By:

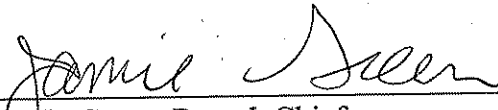
Larry Harms

Larry Harms
Print Name

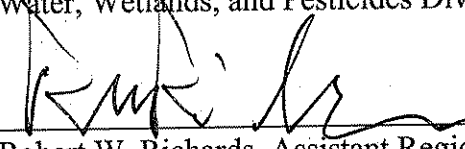
IN THE MATTER OF LARRY HARMS
Docket No. TSCA-07-2009-0012

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/7/09


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

Date: 4/27/09

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

IN THE MATTER OF LARRY HARMS
Docket No. TSCA-07-2009-0012

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

Date: Apr. 28, 2009 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Abatement SEP Work Plan

Respondent: *Larry Harms*

1. Address of Target Housing: (1) 1504 E. 10th, (2) 412 E. 8th, (3) 215 W. 12th
2. Property Owner: *Larry Harms*
3. Properties Are Currently: *Occupied*
4. Scope of work:

Lead-based paint abatement work to be performed at the target housing identified above will include removal and replacement of 18 lead-based painted windows with lead free windows.

All work must be performed by and/or under the supervision of licensed/certified lead-based paint professionals, following the required safe work practices and all other requirements. All work must be performed in accordance with all applicable federal, state, and local laws and regulations.

5. Licensed lead-based professionals/firm:
*S&A Construction, 1600 S. Topeka, Wichita, KS 67211
(316)6770*
6. Cost Estimate: *\$6,657*
7. Planned work start date: *April 13, 09*
(to be filled out by respondent)

The Kansas Department of Health and Environment Lead Licensing Program must receive written notice before the work is started on a lead-based paint abatement project. Within thirty days of the effective date of the consent agreement/final order, this written notification must be provided to the state, and copies must be provided to the Sedgwick County Health Department and EPA Region 7.

8. Estimated work completion date: *April 30, 09*
(to be filled out by respondent)

All work must be completed within ninety days of the effective date of the consent agreement/final order.

9. Report completion date: _____
(to be filled out by EPA)

10. *The SEP Completion Report must be completed and submitted to EPA Region 7, and a copy sent to the state, within thirty days after the completion of the SEP. This report must include:*

- *A detailed description of the SEP as implemented*
- *Itemized costs, documented by copies of purchase orders, receipts or canceled checks*
- *the final abatement report prepared by the contractor, as required by state law.*

EPA will review the final SEP report and notify the Respondent whether the report is, or is not, satisfactory.

Mailing Addresses for Notifications and Reports described above:

EPA Region 7

*901 North 5th Street
WWPD/TOPE
Attention: Stephven Richard
901 North 5th Street
Kansas City, KS 66101*

Kansas Department of Health and Environment

*Lead Licensing Program
Attention: Thomas Langer
1000 SW Jackson, Suite 330
Topeka, KS 66612-1274*

Sedgwick County Health Department

*Attention: Shannon Steinbauer
1900 E. 9th Street
Wichita, KS 67214*

PROPOSAL

Bonded / Insured / License 3534
sandaconstructioninc@.com



OFFICE: 316-262-6770
CELL: 316-734-5835

We Level The Competition!

1600 S. Topeka, Wichita, KS 67211

Additions-Complete Home Remodeling-Kitchens-Bathrooms-Windows-Siding-Finished Basements

BID FOR : Larry Harms
128 E. 5th. St.
Newton KS 67114

DATE: February 23, 2009

Cell 734-3533 Home 283-8679 FAX 316-283-4713

S&A Construction Inc. purposes to provide the labor and material necessary to complete window projects at the locations shown below.

DESCRIPTION OF WORK : WINDOW REPLACEMENT

at Loc.(1) 1504 E. 10th Loc.(2) 412 E. 8th. Loc.(3) 215 W. 12th. All in Newton KS

Remove and replace eighteen (18) windows total. (15 ea.@ loc.#1; 1 ea.@ loc.#2; 2 ea.@ loc.#3)

Replacement windows : double-hung, white, with half-screens and **without** Low-E

Bid includes the following:

- 01. Insulate the bottom of the window frame.
- 02. Caulk exterior joints with SolarSeal 900.
- 03. Haul off all trash.

NOTE: Bid will be done according to LEAD SAFE PRACTICES. All permits and notifications to the state are included in this price. **BUT THIS PRICE DOES NOT INCLUDE ANY LEAD CLEARANCE TESTING.**

All material is guaranteed to be as specified and the above described work to be performed in accordance with any drawings and specifications submitted and is to be completed in a substantial and workmanlike manner for the sum of : **\$6,657.00 or Six Thousand, Six Hundred Fifty-Seven Dollars and No Cents**

Respectfully submitted, *Dale Shearer - 250-2480*

Dale Shearer for Stuart Nelson, President S&A Construction Inc.

ACCEPTANCE OF PROPOSAL

The above specifications, conditions and prices are satisfactory and are hereby accepted.

S & A Construction Inc. is hereby authorized to do the work as specified.

Payments will be made as follows:

50% down with signed contract ; and the remaining **balance** upon completion of the above specified work.

Larry Harms
Authorized Signature

Date

IN THE MATTER OF Larry Harms, Respondent
Docket No. TSCA-07-2009-0012

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:

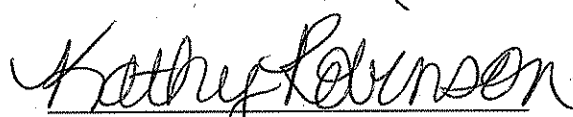
Copy hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Larry Harms
3219 S.E. 36th Street
Newton, Kansas 67114

Dated: 4/29/09


Kathy Robinson
Hearing Clerk, Region 7