

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)
)
)
GREG AND PAMELA GIBSON)
Neosho, Missouri)
)
)
Respondents)

Docket No. TSCA-07-2009-0006

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Greg and Pamela Gibson (Respondents) 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).

FACTUAL ALLEGATIONS

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 Respondents have 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.

Parties

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

4. The Respondents are Greg and Pamela Gibson, 11213 Nighthawk Road, Neosho, Missouri 64850.

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.

Alleged Violations

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

Count 1

7. Respondents are, and at all times referred to herein were, "persons" within the meaning of TSCA.

8. The Properties leased by Respondents were constructed before 1978; therefore, they are "target housing" as that term is defined by 40 C.F.R. § 745.103.

9. Respondents are the "lessors," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 216 S. Lafayette St., #1 ("the Property").

10. Information collected during an EPA review of Respondents' records on August 19, 2008, shows that Respondents entered into a contract to lease the Property on March 11, 2007.

11. Information collected shows that Respondents failed to provide the lessee of the Property managed by Respondents with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under the contract to lease the target housing units managed by Respondents.

12. Respondents' failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a

violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 209 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

13. Respondents are, and at all times referred to herein were, “persons” within the meaning of TSCA.

14. The Properties leased by Respondents were constructed before 1978; therefore, they are “target housing” as that term is defined by 40 C.F.R. § 745.103.

15. Respondents are the “lessors,” as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 120 S. Jefferson St., #2 (“the Property”).

16. Information collected during an EPA review of Respondents’ records on August 19, 2008, shows that Respondents entered into a contract to lease the Property on March 18, 2006.

17. Information collected shows that Respondents failed to provide the lessee of the Property managed by Respondents with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under the contract to lease the target housing units managed by Respondent.

18. Respondents’ failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 209 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

19. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

20. Respondents admit the factual allegations set forth above.

21. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

23. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

24. In settlement of this matter, Respondents agree to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits at 120 South Jefferson, Neosho, Missouri 64850, which is target housing owned by Respondents. Respondents shall by and through a certified lead abatement contractor, at the cost of not less Thirteen Thousand Eight Hundred and Sixty Dollars (\$13,860), remove and replace windows within the target housing in accordance with the Respondents' SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

25. Within thirty (30) days of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to Missouri Department of Health & Senior Services

Lead Licensing Program informing the State of its intent to perform a lead-based paint abatement SEP and requesting procedural information pertaining to performance of the SEP.

26. The total expenditure for the SEP shall be not less than Thirteen Thousand Eight Hundred and Sixty Dollars (\$13,860) and the SEP shall be completed no later than 120 days from the 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.

27. Respondents agree that the construction work on all SEPs referenced in Paragraph 24 above will be performed by entities licensed and/or certified to handle, inspect, and/or dispose of lead-based-paint contaminated waste.

28. Within thirty (30) days of completion of the SEP, Respondents 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 Respondents:

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

- (v) The report shall be directed to the following:

As to EPA:
Stephen Richard, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

As to the state:
Brandon Rekus
Department of Health & Senior Services
Lead Licensing Program
Post Office Box 570
Jefferson City, Missouri 65102-0570

29. If the SEP referenced in Paragraph 24 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondents shall pay a stipulated penalty in the amount of Sixteen Thousand Six Hundred and Thirty-Two dollars (\$16,632), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP. 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) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondents may demonstrate good faith by promptly notifying the EPA Region 7 contact identified in Paragraph 28 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondents are liable under this agreement shall be due and payable within ten (10) days of Respondents' receipt of a written demand from Complainant.

30. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are Respondents 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. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

31. Any public statement, oral or written, in print, film or other media, made by Respondents 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."

32. Respondents consent to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of One Thousand Five Hundred and Forty Dollars (\$1,540) to be paid within thirty (30) days of the effective date of the Final Order. Payment of this civil penalty 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.

33. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 32 above 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.

34. No portion of the civil penalty or interest paid or monies expended on the SEP by Respondents pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

35. The undersigned representative of Respondents certify that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondents to it.

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. Respondents shall pay a mitigated civil penalty of One Thousand Five Hundred and Forty Dollars (\$1,540) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondents 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

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 N. 5th Street
Kansas City, Kansas 66101; and

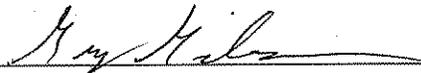
Kristen Nazar, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

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

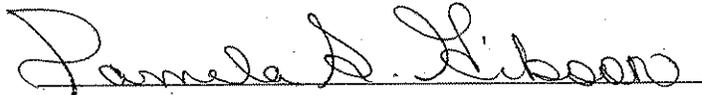
RESPONDENTS
GREG AND PAMELA GIBSON

Date: _____

By: 

Greg Gibson Owner
Print Name Title

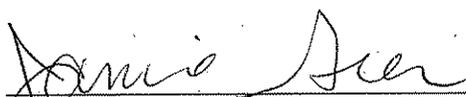
Date: _____

By: 

Pamela S. Gibson Owner
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/11/09

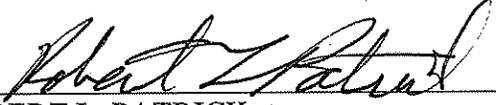
By: 
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 2/11/09

By: 
Kristen Nazar, Attorney
Office of Regional Counsel

IN THE MATTER OF Greg and Pamela Gibson
Docket No. TSCA-07-2009-0006

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

Date: Feb. 18, 2009 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Attachment A

SEP Work Plan

Abatement SEP Work Plan

Respondents: *Greg and Pamela Gibson*

1. Address Of Target Housing: *120 South Jefferson, Neosho, MO 64850*
2. Property Owner: *Greg and Pamela Gibson, 11213 Nighthawk Road, Neosho, MO 64850*
3. Property is currently occupied.
4. Scope of work: *Lead-based paint abatement work to be performed at the target housing identified above will include the removal and replacement of all first level 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:
Gerken Environmental Enterprises, Inc, 1528 W. Vernon Street, Springfield, MO 65802 (417) 863-7254
6. Cost Estimate: \$13,860
7. Work Start: *The Missouri Department of Health and Human Services 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 Saint Louis County Health Department and EPA Region 7.*
8. Work Completion Date: *All work must be completed within one hundred and twenty days of the effective date of the consent agreement/final order.*
9. Report Completion Date: *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

Missouri Department of Health and Senior Services
Lead Licensing Program
Attention: *Brandon Rekus*
930 Wildwood
Jefferson City, MO 65109

GERKEN

ENVIRONMENTAL ENTERPRISES, INC



November 6, 2008

Mr. Greg Gibson
Property Owner
11213 Nighthawk Road
Neosho, Missouri 64850

RE: Lead-Based Paint Window Removal & Replacement Proposal
Residential Property • 120 South Jefferson • Neosho, Missouri

Mr. Gibson:

Project Scope of Work

Removal and disposal of lead-based paint containing window units within multiple apartment units as shown by Mr. Gibson.

General Proposal Conditions

- The facility owner/contractor shall remove all movable items from each work area.
- The facility owner/contractor shall supply all required water and sufficient electricity to each work area.
- The facility owner/contractor shall obtain and hold in good standing insurance-with coverage including but not limited to fire, tornado, flooding, etc. during the entire term of this contract.
- The facility owner/contractor shall be responsible for all required independent third party air monitoring as may be required by state and local regulations unless otherwise stated within this proposal.
- The facility owner/contractor shall be responsible for all required project design documentation which may be required by state or local regulation unless otherwise stated within this proposal.
- Gerken Environmental has not included any replacement materials unless otherwise stated within this proposal.
- Gerken Environmental shall obtain and hold in good standing workman's compensation, public and lead liability insurance as required by state and federal regulations throughout the duration of this proposal.
- Gerken Environmental shall complete this contract utilizing federal and state licensed lead abatement personnel where required.
- Gerken Environmental will take every precaution to minimize damages which may be caused by tape and other materials utilized to complete this proposal. However, Gerken Environmental shall not be held liable for any damage to walls, floor finishes, paint, fixtures, etc. which may become damaged during the abatement process unless otherwise stated within this proposal.
- Gerken Environmental has not included any work to be completed upon the north side of the building.
- All abatement services as defined by this proposal shall be completed in one (1) phase, in fifteen (15) working days.

1528 WEST MT. VERNON STREET | SPRINGFIELD, MISSOURI 65802
P: 417.863.7254 | F: 417.863.8483 | TF: 888.282.7898
www.gerkenenvironmental.com
ASBESTOS | LEAD | BIOLOGICAL | DEMOLITION

November 6, 2008

Payment Terms

Application for payment shall be submitted upon project commencement, this payment application shall be submitted covering costs associated with mobilization to the project site, as well as insurance fee's, bonding fee's, etc. Additional progress payments shall be submitted on the last Thursday of each month. Final application for payment shall be submitted with project close-out documentation; payment shall be rendered upon receipt, regardless of whether Client has been, or is to be, reimbursed by any other party. Client shall notify Gerken in writing of any disputed amount within fifteen (15) calendar days of invoice, otherwise all invoice charges are agreed and acceptable. Client agrees to pay service charges of one and one half percent (1.5%) per month on accounts 30 days past due. Any collection costs will be assessed to the Client, which the Client agrees to pay, including but not limited to court costs and attorneys fees.

Lead Abatement Fees

Removal and disposal of window units containing lead-based paint within multiple units of the above referenced property, in addition to providing and installing new window units as described with the above scope of work, for the sum of:

\$582.00 per single window / \$886.00 per double window

Add/Alternate Fees

Inclusion of independent third party air monitoring on a daily basis, for the sum of:	\$00,000.00
Inclusion of independent third party final clearance air monitoring per work area, for the sum of:	\$00,000.00
Inclusion of asbestos abatement project design (required in Arkansas), for the sum of:	\$00,000.00
Add work areas, for the sum of:	\$00,000.00
Add work areas, for the sum of:	\$00,000.00
Total project cost including all Add/Alternate fees:	\$0,000.00

The above described work shall be performed in accordance with all drawings and specifications submitted for the above defined work and shall be completed in accordance with the above General Conditions and the attached Terms and Conditions for Environmental Services agreement.

Thank you for the opportunity to provide this proposal for services. If you have any questions regarding this proposal, or if I may be of further service to you, please do not hesitate to contact me at 417.863.7254. I look forward to hearing from you soon.

Respectfully,



Greg A. Gerken
Vice President
GERKEN ENVIRONMENTAL ENTERPRISES, INC.

NOV 10 2008

November 6, 2008

Terms and Conditions for Environmental Services Agreement

These terms and conditions are a part and are incorporated into the above Proposal for Asbestos Abatement Services. All agreements from this point forward will be agreements between GERKEN ENVIRONMENTAL ENTERPRISES, INC. (GERKEN) and Mr. Greg Gibson hereby referred to as Client.

Insurance: GERKEN maintains Workers Compensation and General Liability Insurance in conformance with all applicable state law. Certificates of insurance evidencing such coverage will be provided, if requested. In the event Client requests GERKEN to name Client as an additional insured on GERKEN's General Liability or other insurance policies, Client agrees to pay any increased premium charge to GERKEN for such endorsement.

Standard of Care and Warranties: The services will be performed for the benefit of Client. The services conducted by Gerken will be performed in a reasonable and prudent manner in accordance with generally acceptable industry standards in effect at the time and place of the work. Gerken makes no representations or warranties to Client concerning the accuracy of estimated quantities of materials or waste or cost's made in connection with the work. Client acknowledges these shall be estimates only which are subject to revision as the work proceeds and conditions on site are encountered, and that such revisions may affect the cost of the work and Gerken's fee hereunder.

Except as set forth herein, Gerken makes no other representation, guarantee, or warranty, express or implied, in fact or by law, whether of merchantability, fitness for any particular purpose or otherwise concerning any of the services or documents which may be furnished by GERKEN to Client.

Limitation on the Scope of Services: Client acknowledges that GERKEN has not arranged for or participated in generating, treating, storing or disposing of hazardous or toxic substances, pollutants and contaminants or other waste materials which may be present at the site of GERKEN's work. Any waste materials generated by or connected with GERKEN's services shall at no time become the property of GERKEN. Nothing herein shall require GERKEN to assume the status of a generator, transporter or a storage treatment or disposal facility as those terms are defined by the Resource Conservation and Recovery Act, or any federal, state or local statute or regulation governing the generation, treatment, storage or disposal of hazardous waste or solid waste. If GERKEN's services include the transportation of waste materials from the site, GERKEN may evaluate and recommend possible disposal sites for Client's use. Client acknowledges that GERKEN does not accept ownership, title or responsibility for Client's waste or responsibility for the disposal of any waste materials. Client agrees that it shall evaluate and "select" the transporter and the site treatment or disposal of its waste materials and shall be solely responsible therefore. Arrangements made by GERKEN for treatment, storage, transport or disposal of any waste material shall be construed as being made solely for Client's benefit and Client shall indemnify, defend and hold harmless GERKEN against all claims, damages, losses, liability, civil penalties, fines and expenses, including but not limited to attorney's fees, which arise there from.

Limitations of GERKEN's Liability to Client: Except for circumstances caused by the willful misconduct of GERKEN, all claims for damages asserted against GERKEN by Client, including claims asserted against GERKEN's directors, officers, shareholder, employees and agents are limited to the greater of (1) \$25,000.00 or (2) the total sum to be paid to GERKEN under this contract. GERKEN is not responsible for any special, incidental, indirect, or consequential damages (including loss of profits or business interruption) incurred by Client as a result of GERKEN's performance or nonperformance of services. Any claim shall be deemed waived unless made by Client in writing and received by GERKEN within one (1) year after completion of the services.

GERKEN

Clients Indemnification: Client shall indemnify and hold harmless GERKEN, and its shareholders, directors, officers, employees and agents against all losses, damages, claims or causes of action, and all costs incidental thereto (including but not limited to costs of defense, settlement and attorney's fees) which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss or use) to any property, or contamination of or adverse effects on the environment, arising out of or which are in any way caused or contributed to be caused by (1) any release or threatened release of waste materials or any other activity relating to the waste materials (2) the negligent acts or omissions of Client, Client employees, agents and subcontractors, or (3) Client's breach of this agreement.

Right-of-Entry: Client will furnish right-of-entry onto the property for GERKEN, its employees, agents and subcontractors to perform the services called under this agreement and Client represents that it has obtained the needed permits and licenses for the work. If Client does not own the site, Client warrants that it has the permission of the owner of the site to grant this right-of-entry to GERKEN, and Client shall defend, indemnify and hold GERKEN harmless for any and all liabilities arising from or incurred by GERKEN from any such warranty. GERKEN will take reasonable precautions to minimize damage to the property caused by its operations, but have not included in the fee the cost of restoration of damage, which may result. If Client desires GERKEN to restore the property to its approximate former condition, Client shall so notify GERKEN in writing. GERKEN will perform the restoration work and Client agrees to pay GERKEN the costs incurred for such work, plus 15% in addition to the fees provided in the agreement.

Safety: Work will be performed only under safe conditions. GERKEN has the right to discontinue or terminate operations if, in its sole discretion, such discontinuation or termination is necessary for safety and/or health reasons. GERKEN shall be entitled to payment for all actual costs incurred as a result of work stoppage for safety reasons.

Force Majeure: Neither party shall be responsible for damages caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this agreement, force majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, loss or failure to obtain permits, unavailability of labor, materials, fuel or services, court orders, acts of god, acts, orders laws or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. Should a force majeure event occur, the parties shall mutually agree on the terms and conditions upon which the services may be continued, and any deadlines for performance by GERKEN shall be reasonably extended.

Utilities: Client agrees to disclose and locate all utilities serving the project site and the presence and accurate location of hidden or obscure objects, including tanks and piping relative to the services. Client agrees to indemnify, defend and hold harmless GERKEN from all claims, suits, losses, personal injuries, death or property damage resulting from damage or injury to subsurface structures or objects (pipes, tanks, telephone cables, etc.) arising from the performance of GERKEN's services when the existence of such are not called to GERKEN's attention or the locations are not correctly shown on any plans furnished to GERKEN or marked at the site.

Governing Law: This contract shall be governed by, construed and interpreted in accordance with the laws of the State of Missouri, excluding any choice laws, which may direct the application of the laws or any other jurisdiction.

Permit Assistance: Client shall assist GERKEN in obtaining all necessary governmental permits and/or approvals required for the performance of the services. GERKEN's obligations hereunder are specifically subject to issuance of all such permits and/or approvals, and deadlines on Gerken's work shall be extended for any delays in the issuance of permits necessary for the work.

GERKEN

Mr. Greg Gibson
Lead-Based Paint Containing Window Removal and Replacement Proposal

Termination and Suspension of Work: The agreement may be terminated by either party, with or without cause, upon thirty (30) days written notice to the other party. Irrespective of which party terminates or the cause (or lack of cause) therefore, Client shall within thirty (30) days of termination compensate GERKEN for all fees earned and costs incurred up to the time of termination, as well as those associated with termination and post-termination activities, such as demobilization, modifying schedules, reassigning personnel, decontaminating and or disposing of equipment, or disposal and replacement of contaminated consumables. At any time after the total compensation payable to GERKEN under this agreement exceeds \$25,000.00; GERKEN shall have the right to suspend further performance of the services until Client and GERKEN have executed a more comprehensive contract. Either party may suspend performance immediately upon becoming aware of a breach of the terms of this agreement by the other party, and shall thereupon provide written notice of its intention to terminate. In the event GERKEN determines there may be reasonable risk that GERKEN's invoices may not be paid on a timely basis, GERKEN may suspend performance of its services and/or retain any reports or other information until Client provides GERKEN with adequate assurances of payment. The filing of a voluntary or involuntary bankruptcy petition, appointment of a receiver, assignment for the benefit of creditors or other similar act of insolvency by either party shall constitute a breach of the agreement. Termination will become effective fourteen (14) calendar days after receipt of notice by the breaching party unless the event(s) giving rise breach are remedied within the time.

Entire Agreement: This agreement constitutes the entire agreement between the parties and supersedes any and all prior written or oral agreements existing between the parties. This agreement may be amended only by written instrument signed by each party.

Precedence: This agreement shall take precedence over any inconsistent or contradictory provisions contained in any Client issued purchase order, requisition, notice to proceed, or like document regarding the services.

Survival: All obligations arising prior to termination of this agreement and all provisions of this agreement providing indemnity or allocating responsibility or liability between Client and GERKEN shall survive the completion of the services hereunder and the termination of this agreement.

Deliverables and Electronic Files: In accepting and utilizing any drawings, reports or data in hard copy or in any form of electronic media generated and furnished by GERKEN (hereinafter called data), the Client agrees that all such data are instruments of services of GERKEN, which shall be deemed the author, and shall retain all common law, statutory law and other intellectual property rights, including copyrights to the data. The Client agrees not to reuse the data, in whole or in part for any purpose other than for the work. The Client agrees not to transfer the data to others without prior written consent of GERKEN. The Client further hereby waives all claims against GERKEN resulting in any way from any unauthorized changes to or reuse of the data for any other project by anyone other than GERKEN. The Client and GERKEN agree that any data furnished by either party shall confirm to the specifications agreed upon in the agreement. Any changes to the data specifications by either the Client or GERKEN are subject to prior review and acceptance by the other party. Additional services by GERKEN made necessary by changes to the data specifications shall be compensated as additional services. Data furnished by other party shall be subject to an acceptance period of thirty (30) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the data shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the data shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files of the data. The Client is aware that differences may exist between the electronic data files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by GERKEN and electronic data files, the signed and sealed hard-copy construction documents shall govern. The data may not be used or reused by Client, its employees, agents or subcontractors on any extension of the project or on any other project without the prior written consent of GERKEN, which consent will not be unreasonably withheld. In addition the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless GERKEN, its shareholders, officers, directors, employees and subcontractors or consultants (collectively GERKEN) against all damages, liabilities or costs, including attorney fees and defense costs, arising from any changes to the data made by anyone other than GERKEN or from any reuse of the data without prior written consent. Under

GERKEN

November 5, 2008

no circumstance shall delivery of data for use by the Client be deemed a sale by GERKEN and GERKEN makes no warranties, express or implied of merchantability and fitness for any particular purpose regarding the data. In no event shall GERKEN be liable for indirect or consequential damages as a result of the Client's use or misuse of the data.

Independent Contractor: GERKEN is an independent contractor and not an employee, agent, representative or joint venture of Client. Client is interested only in the results achieved by the services of GERKEN; GERKEN shall determine the time, manner, means and method of doing work. Client is not responsible for deducting and shall not deduct from payments to GERKEN any amounts for withholding tax, FICA, insurance or similar items relating to GERKEN, its employees or subcontractors.

Severability: If any portion of this agreement is determined to be unenforceable or invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and be binding on both parties. In the event any provisions are deemed unenforceable or invalid, the parties agree to revise the agreement to replace such provisions with valid and enforceable provisions that as closely as possible express the intention of the stricken provision(s). These terms and conditions shall survive the completion of the services under this agreement and the termination of the agreement for any cause.

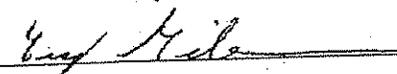
Binding Effect: This agreement shall be binding upon the parties hereto and upon their respective heirs, personal representatives, successors and permitted assigns.

Assignment: The obligations of each party hereunder may not be assigned without the prior written consent of the other party.

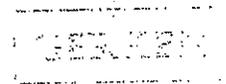
Amendment: This agreement may not be amended or modified except by a writing signed by each party.

Jurisdiction and Venue of Legal Proceedings: The parties agree that the Circuit Courts of Greene County, Missouri shall have exclusive jurisdiction and shall be the venue of all suits regarding this agreement, and Client hereby consents to personal jurisdiction in such court. Any mediation or arbitration proceedings between the parties shall be conducted in Greene County, Missouri. In any legal proceeding between the parties regarding this agreement, the prevailing party shall be entitled to recover its cost and attorneys fees from the other party.

QUOTATION AND AGREEMENT ACCEPTANCE


MR. GREG GIBSON
PROPERTY OWNER

Nov 17th 2008
DATE



IN THE MATTER OF Greg and Pamela Gibson, Respondents
Docket No. TSCA-07-2009-0006

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:

Kristen Nazar
Office of Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Greg and/or Pamela Gibson
11213 Nighthawk Road
Neosho, Missouri 64850

Dated: 2/18/09


Kathy Robinson
Hearing Clerk, Region 7