

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

11 APR 21 AM 8:21
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

In the Matter of)	Docket No. TSCA-07-2011-0012
)	
Window World)	CONSENT AGREEMENT
13229 I Street)	AND
Omaha, NE 68137)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Window World (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 E, *Residential Property Renovation*, promulgated pursuant to Title IV (15 U.S.C. 2681-2692) of TSCA

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 Window World, 13229 I Street, Omaha, Nebraska.

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 406(b) of the law directed EPA to issue regulations requiring that compensated renovators distribute an approved lead information pamphlet to owners and occupants of housing constructed before the phase out of residential lead-based paint use in 1978 before beginning renovations. The regulations became effective on June 1, 1999 and are codified at 40 C.F.R. Part 745 Subpart E. The failure or refusal to comply with the regulations is a violation of Section 409 of TSCA.

Section IV

Violation

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

7. Respondent is and at all times referred to herein was a “person” within the meaning of TSCA.

8. Respondent is a “renovator” who performed “renovations” as defined by 40 C.F.R. § 745.83 for compensation.

9. Respondent performed renovations on the following properties in Omaha, Nebraska: 210 South 118th Street; 14917 Polk Street; 9504 Emmett Street; 3131 Willit Street; 4009 Wright Circle; 102 North 53rd Street; 6008 South 40th Street; and 3443 South 16th Street. These properties were constructed before 1978.

10. These properties are “target housing” as defined by 40 C.F.R. § 745.103.

11. Respondent failed to provide the owners and/or occupants of the properties listed in Paragraph 9, above, with an EPA-approved lead hazard information pamphlet and obtain a written acknowledgement or certificate of mailing prior to the commencement of renovation activities at the property.

12. Respondent’s failure to perform the acts indicated in paragraph 11 above are violations of 40 C.F.R. § 745.84(a) 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.

Consent Agreement

13. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

14. Respondent neither admits nor denies the factual allegations set forth above.

15. 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.

16. 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.

17. 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 E.

18. 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.

19. 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 E alleged in this document.

20. Respondent understands that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

21. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP) within ninety days from the date this agreement is finalized, which the parties agree is intended to secure significant environmental and/or public health benefit. Respondent will donate 71 windows to Soby Ranch Ministry, a non-profit organization, for use in Project Operation Phoenix. The windows will be used in the rehabilitation of five houses in Omaha, Nebraska located at 3610 Franklin Street, 5710 Sargent

Street, 1709 Laird Street, 2807 Fort Street and 1906 North 28th Street while providing training in construction to unskilled individuals. Total cost of the SEP is estimated at approximately \$11,928.

22. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

A detailed description of the SEP as implemented including the total number of windows delivered and the wholesale cost of the windows.

The report shall be directed to the following:

Maria Morey
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

23. If the SEP referenced in Paragraph 21 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 120% 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) days of the effective date of the Final Order. In the event of circumstances beyond its control

rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 22 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 receipt of a written demand from Complainant.

24. 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.

25. 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.

26. 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."

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 Three Thousand Nine Hundred and Seventy-six Dollars (\$3,976.00) within thirty (30) days of the effective date of this Final Order. The payment shall be identified as **In the Matter of Window World**. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

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

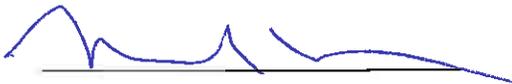
3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

RESPONDENT

Window World

Date: 4-8-11

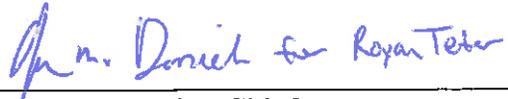
By: 

MIKE BENDFELDT
Print Name

Pres
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/18/11



Royan Teter, Acting Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 4/15/11



Kent Johnson
Office of Regional Counsel

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

Date: Apr. 20, 2011 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Window World, Respondent
Docket No. TSCA-07-2011-0012

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:

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

Copy by Certified Mail Return Receipt to:

Mike Bendefeldt, President
Window World
13229 I Street
Omaha, Nebraska 38137

Dated: 4/21/11



Kathy Robinson
Hearing Clerk, Region 7