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	)	**Docket No. TSCA-07-2009-0017**
Telma Abate & Hossein Fadavi d/b/a 5803-07-11 Cabanne LLC	)	
Respondents	)	

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about March 27, 2009 pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), when the United States Environmental Protection Agency (EPA), Region 7 (EPA or Complainant) issued a Complaint and Notice of Opportunity for Hearing to Telma Abate & Hossein Fadavi (Respondents).

The Complaint charged Respondents with violations of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations 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* (Disclosure Rule), which were promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

The Complaint proposed a civil penalty of Fifty Eight Thousand One Hundred and Twenty Dollars ($58,120.00) for these violations. Complainant and Respondents entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of the Complaint, and admits the factual allegations of the Complaint.

2. Respondents waive their right to contest the allegations of the Complaint and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

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

5. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated 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.

6. 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: Respondents shall by and through a certified lead abatement contractor agree to have 126 lead-based paint contaminated windows at its property located at 5909 Cates, St. Louis, Missouri, removed and replaced with 126 lead-based paint free windows.

7. Respondents are responsible for ensuring that their contractors, subcontractors, and representatives performing the SEP described in Paragraph 6 receive a copy of this Consent Agreement/Final Order.

Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

8. Within **thirty (30) days** of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior Services (State Agency) informing the state of their intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

9. The total expenditure for the SEP shall be not less than $13,860 and the SEP shall be completed no later than **one hundred eighty (180) days** of the effective date of this Consent Agreement and Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

10. Respondents agree that the construction work on all SEPs referenced in Paragraph 6 above will be performed by entities licensed and/or certified to handle, inspect, and perform abatement projects.

11. 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 the Respondents:

We 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. We are aware that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment.

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

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

As to the state:
Brandon Rekus, Program Director
Missouri Department of Health and Environment
930 Wildwood
Jefferson City, Missouri 62109

12. In the event that Respondents fail to complete the SEP in accordance with this Order or to the extent that actual expenditures for the SEP do not equal or exceed the amount of money required to be expended on the SEP as set forth above, Respondents shall be liable for stipulated penalties as follows:

(i) If the SEP is not timely completed to the satisfaction of EPA in accordance with the terms of this Order, Respondents shall pay a stipulated penalty 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.

(ii) If the SEP is completed to the satisfaction of EPA but Respondents' actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondents shall pay a stipulated penalty of One Thousand Five Hundred and Forty dollars ($1,540).

(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.

13. 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.

14. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

15. 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."

16. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above or any portion of a stipulated penalty as stated in Paragraph 11 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.

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 $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

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

Chris Muehlberger, 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
TELMA ABATE AND HOSSEIN FADAVI

5803-07-11 Cabanne LLC

Date: 6/18/09 By: _____

TELMA ABATE — member
Print Name — Title

5803-07-11 CABANNE LLC

Date: 6-18-09 By: _____

HOSSEIN FADAVI — member
Print Name — Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/7/09 By: _____
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 8.17.09 By: _____
Chris Muehlberger
Office of Regional Counsel

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

Date: August 18, 2009

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

IN THE MATTER OF Telma Abate & Hossein Fadavi d/b/a 5803-07-11 Cabanne LLC, Respondents
Docket No. TSCA-07-2009-0017

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:

Chris Muehlberger
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:

Telma Abate and Hossein Fadavi
798 Dielman Road
Saint Louis, Missouri 63132

and

Richard Abrams
Attorney at Law
8000 Maryland Ave., Suite 1000
Saint Louis, Missouri 63105-3732

Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 8/19/09

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7