



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

October 14, 2021

REPLY TO THE ATTENTION OF E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In the Matter of: TWDS, Inc., a/k/a My Last Bath, Windows Direct of
Cincinnati, d/b/a Windows Direct USA of
Cincinnati and Windows Direct (Cincinnati, Ohio)
Docket: TSCA-05-2021-0013
Complaint Date: September 30, 2021
Total Proposed Penalty: \$104,372.00

Dear Judge Biro:

Pursuant to 40 C.F.R. § 22.21(a) I have enclosed the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions, please contact me at (312) 886-3713 or r5hearingclerk@epa.gov .

Sincerely,

LADAWN
WHITEHEAD

Digitally signed by LADAWN
WHITEHEAD
Date: 2021.10.14 18:36:55 -05'00'

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION 5**

In the matter of:	:	Docket No. TSCA-05-2021-0013
TWDS, Inc., a/k/a My Last Bath, Windows Direct of Cincinnati, d/b/a Windows Direct USA of Cincinnati and Windows Direct, Cincinnati, Ohio	:	ANSWER OF RESPONDENTS TO ADMINISTRATIVE COMPLAINT; REQUEST FOR HEARING; REQUEST FOR SETTLEMENT CONFERENCE
Respondents	:	

Now comes TWDS, Inc. a/k/a My Last Bath, Windows Direct of Cincinnati, d/b/a Windows Direct USA of Cincinnati and Windows Direct, (hereinafter referred to collectively as Respondents) by and through counsel, and for their Answer to the Complaint states as follows:

FIRST DEFENSE

1. That the Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. That they admit the allegations contained in Paragraphs 1, 2, and 3 of the Complaint.
3. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Complaint and therefore deny said allegations.
4. That they admit and deny the allegations contained in Paragraph 32 of Complaint, as hereinbefore admitted and denied.

5. That they admit the allegations contained in Paragraphs 33 and 34 of the Complaint.

6. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 35 and 36 of the Complaint and therefore deny said allegations.

7. That they deny each and every allegation contained in Paragraph 37 of the Complaint.

8. That they admit the allegations contained in Paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of the Complaint.

9. That they deny each and every allegation contained in Paragraph 48 of the Complaint.

10. That they admit and deny the allegations contained in Paragraph 49 of the Complaint as hereinbefore admitted and denied.

11. That they deny each and every allegation contained in Paragraphs 50 and 51 of the Complaint.

12. That they admit and deny the allegations contained in Paragraph 52 of the Complaint as hereinbefore admitted and denied.

13. That they admit the allegations contained in Paragraph 53 of the Complaint.

14. That they deny each and every allegation contained in Paragraphs 54 and 55 of the Complaint.

15. That they admit and deny the allegations contained in Paragraph 56 of the Complaint as hereinbefore admitted and denied.

16. That they deny each and every allegation contained in Paragraphs 57 and 58 of the Complaint.

17. That they admit and deny the allegations contained in Paragraph 59 of the Complaint as hereinbefore admitted and denied.

18. That they admit the allegations contained in Paragraph 60 of the Complaint.

19. That they deny each and every allegation contained in Paragraphs 61 and 62 of the Complaint.

20. That they admit and deny the allegations contained in Paragraph 63 of the Complaint as hereinbefore admitted and denied.

21. That they deny each and every allegation contained in Paragraphs 64, 65, and 66 of the Complaint.

22. That they admit the allegations contained in Paragraphs 67 and 68 of the Complaint.

23. That they deny each and every allegation contained in Paragraph 69 of the Complaint.

24. That they deny each and every allegation contained in Paragraphs 70 and 71 of the Complaint.

25. That they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 72 and 73 of the Complaint and therefore deny said allegations.

26. That they deny each and every other allegation not herein specifically admitted to be true.

THIRD DEFENSE

27. That there is insufficiency of service of process on the Respondents.

FOURTH DEFENSE

28. That the Complaint is barred by the applicable statute of limitations, and/or laches.

FIFTH DEFENSE

29. That there has been a complete accord, satisfaction, release and/or discharge of the Complainant's claims.

SIXTH DEFENSE

30. All of Complainant's claims are barred by an election of remedies.

SEVENTH DEFENSE

31. That the Complainant lacks personal and subject matter jurisdiction over this Respondent.

EIGHTH DEFENSE

32. That the Complainant's claims are barred by contributory negligence and/or assumption of the risk.

NINTH DEFENSE

33. Plaintiff's damages, if any, were proximately caused by a superseding and/or intervening cause.

TENTH DEFENSE

34. Complainant's damages were caused by the acts and omissions of third parties over whom the Respondents have no control.

ELEVENTH DEFENSE

35. That the Complainant has failed to join all necessary and indispensable parties.

TWELFTH DEFENSE

36. That the Complainant has failed to mitigate its damages.

THIRTEENTH DEFENSE

37. That the Complaint is barred by waiver and/or estoppel.

FOURTEENTH DEFENSE

38. That none of the claimed violations involve any of the risks or hazards referred to in the Complaint.

FIFTEENTH DEFENSE

39. That 15 U.S.C. § 2610(a) requires notice to the “owner, operator or agent in charge of the premises.

SIXTEENTH DEFENSE

40. That the inspection shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

SEVENTEENTH DEFENSE

41. That 15 U.S.C. § 2610(b)(ii) specifies for certain data and the notice must describe it with reasonable specificity.

EIGHTEENTH DEFENSE

42. That the Respondents deny that access was refused.

NINETEENTH DEFENSE

43. That the Respondents did cooperate, that the actions of EPA on October 7, 2019 were not reasonable, and therefore, there are no legal or factual bases for Count 1.

TWEENTITH DEFENSE

44. That the actions involve hyper-technical violations that create no risk of harm to a single person and is a *de minimis* violation worthy of only a *de minimis* fine.

TWENTY-FIRST DEFENSE

45. That the four people involved each have received (and reviewed) the pamphlet; and that what he/she saw therein would not have changed any action subsequently taken. In any event, this is just another hyper-technical violation that caused no risk of harm to anyone and is also *de minimis*.

TWENTY-SECOND DEFENSE

46. That by the EPA's own admission these are only record keeping violations and present no harm to anyone.

TWENTY-THIRD DEFENSE

47. That only time will tell if the Respondents can withstand payment of \$104,000. What is certain is that the Respondents will now not be able to expend certain monies on increased wages, more efficient equipment and maybe even the installation of better record-keeping procedures.

TWENTY-FOURTH DEFENSE

48. That the nature of the violations are harmless and are technical and/or record-keeping only.

TWENTY-FIFTH DEFENSE

49. That the Respondents are small businesses whose ability to pay is much less than what a larger regulated entity is capable of paying.

TWENTY-SIXTH DEFENSE

50. That in every instance, the risk of harm was little or none.

TWENTY-SEVENTH DEFENSE

51. That actions by the United States government (including the EPA) have raised the costs of doing business for multiple entities, thus causing inflation.

TWENTY-EIGHTH DEFENSE

52. In the interest of brevity and judicial economy, these answering Respondents incorporate herein by reference as if fully rewritten each and every affirmative defense available to them pursuant to the Federal Rules of Civil Procedure and, further, specifically reserve the right to amend their answer hereto should the need thereof arise.

TWENTY-NINTH DEFENSE

53. That the Respondents hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent through the course of discovery and therefore, reserve the right to amend their answer, file further pleadings and assert additional claims and defenses.

WHEREFORE, having fully answered, the Respondents pray that the Administrative Complaint be dismissed as to them at the cost of the Complainant.

Further, Respondents request hearing conducted according to the Consolidated Rules. Finally, Respondents request an informal settlement conference to discuss the facts of this proceeding.

/s/ JAY R. LANGENBAHN
JAY R. LANGENBAHN (0009460)
LINDHORST & DREIDAME CO., L.P.A.
Attorneys for Respondents
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d/b/a Windows Direct USA of
Cincinnati and Windows Direct
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document was served by electronic delivery and via ordinary U.S. Mail, postage prepaid, on this the ____ day of October, 2021, upon the following:

McAulife.mary@epa.gov

Ms. Mary McAuliffe
Associate Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd. (C-141)
Chicago, IL 60604

[La Dawn Whitehead \(whitehead.ladawn@epa.gov\)](mailto:whitehead.ladawn@epa.gov)

U.S. EPA Region 5
Office of the Regional Hearing Clerk
77 W. Jackson Blvd (E-19J)
Chicago, IL 60604

Ann Carl Regional Judicial Officer

/s/ Jay R. Langenbahn _____
Jay R. Langenbahn

In the Matter of: TWDS, Inc., a/k/a My Last Bath, Windows Direct of Cincinnati, d/b/a
Windows Direct USA of Cincinnati and Windows
Direct (Cincinnati, Ohio)

Docket: TSCA-05-2021-0013

Certificate of Service

I certify that I served a copy of the Respondent's Answer by electronic mail to:

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
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1200 Pennsylvania Ave., NW
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WHITEHEAD

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LaDawn Whitehead
Regional Hearing Clerk
Region 5