



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 8  
 1595 WYNKOOP STREET  
 DENVER, CO 80202-1129  
 Phone 800-227-8917  
<http://www.epa.gov/region08>

2016 MAR 31 PM 3:59

FILED  
 EPA REGION VIII  
 HEARING CLERK

DOCKET NO.: TSCA-08-2016-0003

IN THE MATTER OF:	)	
	)	
CLOOTEN SIDING & WINDOW, INC.	)	FINAL ORDER
1617 E. Broadway Avenue	)	
Bismarck, North Dakota 58501	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 31<sup>st</sup> DAY OF March, 2016.

Thomas Rucki  
 Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2016 MAR 31 PM 3: 59

Docket No. TSCA-08-2016-0003

FILED  
EPA REGION VIII  
HEARING CLERK

\_\_\_\_\_  
**IN THE MATTER OF:** )

**Clooten Siding & Window, Inc.** )  
**1617 E Broadway Avenue** )  
**Bismarck, North Dakota 58501,** )

**Respondent.** )  
\_\_\_\_\_ )

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, Clooten Siding & Window, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. Part 745.

II. RESPONDENT

3. Respondent is a corporation organized under the laws of the State of North Dakota.
4. Respondent is a "person" for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
5. Respondent is a "firm" as defined by 40 C.F.R. § 745.83.
6. Respondent is a firm certified to perform renovations on target housing, pursuant to 40 C.F.R. § 745.89.

III. ALLEGED VIOLATIONS

7. As directed by section 402(c) of TSCA, the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule codified at 40 C.F.R. Part 745, Subpart E.

8. Failure to comply with any provision of the RRP Rule, 40 C.F.R. Part 745, Subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. Section 16 of TSCA, 15 U.S.C. § 2615, as modified by 40 C.F.R. Part 19, authorizes the EPA to assess a civil penalty of up to \$37,500 for each violation of section 409.
9. On August 11, 2015, an authorized representative of the EPA conducted a compliance inspection at Respondent's jobsite at 1020 N 11th Street, Bismarck, North Dakota (Jobsite) to determine compliance with the RRP Rule.
10. The Jobsite is a residential housing property constructed prior to 1978 and is "target housing" as the term is defined in 40 C.F.R. § 745.103.
11. Respondent performed a "renovation," as that term is defined in 40 C.F.R. § 745.83, by replacing windows at the Jobsite for compensation.

Count 1

12. The RRP Rule requires that firms performing renovations provide occupants of target housing with the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" (Renovate Right pamphlet) no more than 60 days before beginning renovation activities, pursuant to 40 C.F.R. § 745.84.
13. Firms are required to obtain written acknowledgement that the occupant has received the Renovate Right pamphlet or obtain a certificate of mailing at least seven (7) days prior to the renovation pursuant to 40 C.F.R. § 745.84(a)(2).
14. Respondent failed to obtain, from the occupant of the Jobsite, a written acknowledgment that the occupant received the Renovate Right pamphlet or a certificate of mailing at least seven (7) days prior to the renovation, in violation of 40 C.F.R. § 745.84(a)(2).
15. Respondent's failure to obtain written acknowledgment or a certificate of mailing of the Renovate Right pamphlet constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

16. The RRP Rule requires that firms performing renovations on target housing post signs clearly defining the work area and warning occupants and other persons to remain outside of the work area, pursuant to 40 C.F.R. § 745.85(a)(1).
17. At the time of the inspection, Respondent had not posted signs defining the work area, in violation of 40 C.F.R. § 745.85(a)(1).
18. Respondent's failure to post signs constitutes a violation of section 409 of TSCA U.S.C. § 2689.

Count 3

19. Firms performing renovations on target housing are required to ensure that a certified renovator is assigned to each renovation and carries out the renovator responsibilities in accordance with

40 C.F.R. § 745.90, pursuant to 40 C.F.R. § 745.89(d)(2).

20. Respondent failed to assign a certified renovator to the renovation of the Jobsite, in violation of 40 C.F.R. § 745.89(d)(2).
21. Respondent's failure to assign a certified renovator constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

#### Count 4

22. The RRP Rule requires that waste from a renovation be contained to prevent releases of dust and debris when the firm transports waste from renovation activities, pursuant to 40 C.F.R. § 745.85(a)(4)(iii).
23. At the time of the inspection, Respondent had failed to contain waste from the Jobsite to prevent releases of dust and debris during transport, specifically the EPA observed that windows removed from the Jobsite were not contained and were leaning against Respondent's vehicle, in violation of 40 C.F.R. § 745.85(a)(4)(iii).
24. Respondent's failure to contain waste to prevent releases of dust and debris during transport constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

#### Count 5

25. Firms performing renovations on target housing are required to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, pursuant to 40 C.F.R. § 745.85(a)(5)(i)(A).
26. At the time of the inspection, the EPA observed that Respondent had failed to collect paint chips and debris on the ground in the work area and seal the material in a heavy-duty bag without dispersing it, in violation of 40 C.F.R. § 745.85(a)(5)(i)(A).
27. Respondent's failure to collect all paint chips and debris in the work area at the Jobsite constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

#### Count 6

28. Firms performing renovations on target housing are required to maintain records necessary to demonstrate compliance with the RRP Rule, pursuant to 40 C.F.R. § 745.86.
29. Respondent failed to maintain records necessary to demonstrate compliance with the RRP Rule, in violation of 40 C.F.R. § 745.86.
30. Respondent's failure to maintain records constitutes a violation of sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

#### IV. SETTLEMENT

31. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
32. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
33. By signing this Consent Agreement, Respondent: (a) admits that Respondent was subject to the RRP requirements, 40 C.F.R. Part 745 Subpart E, at the time the work described herein was being conducted; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
34. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of two thousand eight hundred dollars (\$2,800) is appropriate to settle this matter.
35. Respondent consents and agrees to pay a civil penalty in the amount of two thousand eight hundred dollars (\$2,800) in the manner described below.
  - a. Payment shall be in two installments. The first installment is due no later than thirty (30) calendar days from the date of the Final Order issued by the Regional Judicial Officer adopting this Consent Agreement. The remaining installment is due 60 days after the due date for the first installment. The first installment shall be in the amount of \$1,400. The second installment shall be in the amount of \$1,400.
  - b. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
36. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

**If sent by regular U.S. mail:**

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
Box 979077  
St. Louis, Missouri 63197-9000

**If sent by any commercial carrier or signed receipt confirmation:**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

**If sent by wire transfer:** Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT Address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: U.S. Environmental Protection Agency

**Automated Clearing House (ACH) for receiving U.S. currency:**

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

U.S. Treasury Contact Information:  
REX (Remittance Express): 866-234-5681

**Online debit and credit card payment:**

[www.Pay.gov](http://www.Pay.gov)  
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

37. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek  
U.S. EPA Region 8 (8ENF-AT)  
Technical Enforcement Program  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

and

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

38. In the event of default in the payment of any of the said installments or said interest when due as herein provided, EPA may, without notice or demand, declare the entire penalty sum then unpaid immediately due and payable.
39. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31st) day from the due date of any payment, and for each subsequent thirty (30) day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
40. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

#### V. GENERAL PROVISIONS

41. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.
42. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Consent Agreement.
43. This Consent Agreement, upon incorporation into a Final Order and full satisfaction by both parties, shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Consent Agreement.
44. Respondent waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.
45. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to, the following:
  - a. Claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs that are caused by Respondent's failure to comply with this Agreement;
  - b. Claims based on criminal liability; and,
  - c. Claims based on any other violations of TSCA or federal or state law.
46. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and

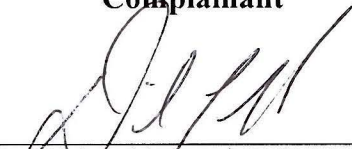
its implementing regulations.

- 47. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
- 48. Respondent agrees that the penalty specified in this Consent Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
- 49. Each party to this action shall bear its own costs and attorney fees, if any.
- 50. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
- 51. In accordance with 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement is the date on which a Final Order is filed approving this Consent Agreement.

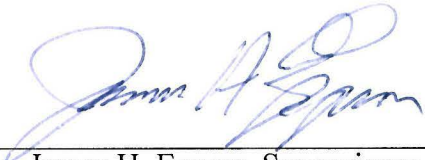
**FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,**

**Complainant**

Date: 3/24/16

By:   
David Cobb, Acting Supervisor  
Toxics Enforcement Unit  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-AT)  
U.S. Environmental Protection Agency,  
Region 8

Date: MAR 24 2016


By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice (8ENF-L)  
U.S. Environmental Protection Agency,  
Region 8



**FOR Clooten Siding & Window, Inc.,**

**Respondent**

Date: 3/14/2016

By: 

Printed Name: Tom Clooten

Title: Owner

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **CLOOTEN SIDING & WINDOW, INC.; DOCKET NO.: TSCA-08-2016-0003** were filed with the Regional Hearing Clerk on March 31, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt and emailed on March 31, 2016, to:


Respondent is represented by:

Tom Clooten  
Owner  
Clooten Siding & Window, Inc.  
1617 E. Broadway Avenue  
Bismarck, North Dakota 58501

And emailed to:

Jessica Farmer  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 31, 2016

  
\_\_\_\_\_  
Melissa Haniewicz  
Acting Regional Hearing Clerk

