



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 28 2020

REPLY TO THE ATTENTION OF

VIA ELECTRONIC EMAIL

Mr. Harvey Sheldon
Partner
Hinshaw & Culbertson LLP
1 East Broward Blvd, Suite 1010
Ft. Lauderdale, Florida 33301
hsheldon@hinshawlaw.com

Consent Agreement and Final Order – In the Matter of:
Continental Window and Glass Corporation, Docket No. TSCA-05-2020-0004

Dear Mr. Sheldon:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 28, 2020 with the Regional Hearing Clerk.

The civil penalty in the amount of \$38,105 is to be paid in the manner described in paragraph's 83 and 84. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christina Saldivar".

Christina Saldivar
Pesticides and Toxics Compliance Section

Enclosure

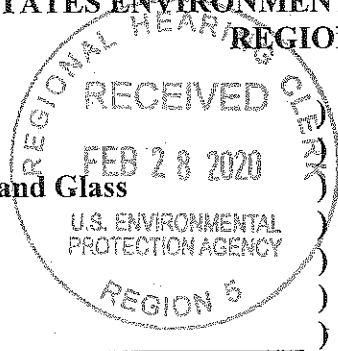
cc: Josh Zaharoff, (C-14J)
Matthew Walsh, Hinshaw & Culbertson LLP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Continental Window and Glass
Corporation,
Chicago, Illinois

Respondent.



Docket No. TSCA-05-2020-0004

Proceeding to Assess a Civil Penalty Under
Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U. S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Continental Window and Glass Corporation, a limited liability corporation with a place of business located at 4311 W. Belmont Avenue, Chicago, Illinois 60641.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations set forth in this CAFO.

8. Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy

to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

11. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

14. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681-2692.

15. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 754.87.

16. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

17. Under Sections 402 and 407 of TSCA, 15 U.S.C. §§ 2682 and 2687, EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, Residential Property Renovation and Lead-Based Paint Activities, to prescribe procedures and requirements for the accreditation of training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities. *See* 73 FR 21691.

Definitions

18. 40 C.F.R. § 745.83 defines *child-occupied facility* to mean a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on a least two different days within any week (Sunday through Saturday period), provided that each day's visit last at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

19. 40 C.F.R. § 745.103 defines *common area* to mean a portion of a building that is generally accessible to all occupants. Such areas may include, but are not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages and boundary fences.

20. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

21. 40 C.F.R. § 745.83 defines *pamphlet* to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revisions or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

22. 40 C.F.R. § 745.83 defines *renovation* to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term *renovation* includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

23. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

24. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less

than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

Renovation Requirements

25. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities on or after April 28, 2010, with exceptions not relevant here. 40 C.F.R. § 745.82.

26. 40 C.F.R. § 745.84(a)(1) requires that the firm performing the renovation in target housing must provide the owner with the pamphlet, and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certification of mailing at least 7 days prior to the renovation.

27. 40 C.F.R. § 745.84(b)(1) requires that the firm performing the renovation in common areas of multi-unit target housing must provide the owner with the pamphlet, and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certification of mailing at least 7 days prior to the renovation.

28. 40 C.F.R. § 745.84(b)(2) requires that the firm performing the renovation in common areas of multi-unit target housing must comply with one of the following: distribute written notification to each affected unit describing the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupants can obtain the pamphlet; or post informational signs where they are likely to be seen by occupants of all the affected units describing the general nature of the renovation, the anticipated completion date, and post a copy of the pamphlet or information on how occupants can review a copy of the pamphlet.

29. 40 C.F.R. § 745.84(b)(3) requires that the firm performing the renovation in common areas of multi-unit target housing must prepare, sign and date a statement describing the steps performed to notify all occupants of the intended renovation activities and must provide the pamphlet.

30. 40 C.F.R. § 745.84(c)(1) requires that the firm performing the renovation in a child-occupied facility must provide the owner with the pamphlet and obtain from the owner of the building a written acknowledgement that the owner has received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation. If the child-occupied facility is not the owner of the building, the firm performing the renovation in a child-occupied facility must provide the adult representative with the pamphlet and obtain from the adult representative of the building a written acknowledgement that the adult representative has received the pamphlet, or obtain a certificate of mailing at least 7 days prior to the renovation.

31. 40 C.F.R. § 745.84(c)(2) requires that the firm performing the renovation in a child-occupied facility must provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature, locations of the renovation, anticipated completion date, and information on how parents and guardians of children can review a copy of the records, and comply with the following: mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or, post informational signs where they are likely to be seen by the parents and guardians of the children describing the general nature of the renovation, the anticipated completion date, and post a copy of the pamphlet or information on how parents and guardians of the children can review a copy of the pamphlet.

32. 40-C.F.R. § 745.84(c)(3) requires that the firm performing the renovation in child-occupied facilities must prepare, sign and date a statement describing the steps performed to notify all parents or guardians of children frequenting the child-occupied facility of the intended renovation activities and must provide the pamphlet.

33. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

34. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

35. 40 C.F.R. § 745.86(b)(6) requires firms to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

36. 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) require firms that perform, offer, or claim to perform renovations for compensation to apply for and obtain certification from EPA to perform renovations at target housing or child-occupied facilities, with exceptions not relevant here.

Penalty Provisions

37. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689,

which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

38. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19, authorize the Administrator of EPA to assess a civil penalty of up to \$38,114 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015.

General Allegations

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

40. At all times relevant to this CAFO, Respondent's corporation was a firm as defined by 40 C.F.R. § 745.83.

41. On November 18, 2016, Complainant issued a request for information to Respondent, seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgement of receipt of a pamphlet by the owners and occupants of residential housing.

42. On June 4, 2018, Respondent provided Complainant with documents responsive to the request for information referenced in paragraph 41.

43. Based on the information Complainant received, and building-year information publicly available on the property value assessment websites (accessed on June 7, 2018) of Cook County, DuPage County, and Lake County; Respondent performed, or directed workers to perform for compensation, the following modifications of existing structures that resulted in disturbances of painted surfaces as detailed in this Table:

Line Number	Property Address	Residence Type	Built Year	Contract Date	Contracted Work
1	2746 N Mulligan, Chicago, IL 60639	Multi-Family	1959	11/4/2016	Replace 8 windows
2	1214-1224 West Rosemont, Chicago, IL 60641	Multi-Family	1921	11/11/2016	Replace 12 windows
3	9833 S Hamilton Ave, Chicago, IL 60643	Single-Family	1937	11/23/2016	Replace 29 windows
4	2630 N Marshfield, Chicago, IL 60614	Multi-Family	1896	11/29/2016	Replace 12 windows
5	5251 W Barry Ave, Chicago, IL 60641	Single-Family	1927	12/10/2016	Replace 1 window
6	8926 Harms Rd, Morton Grove, IL 60053	Single-Family	1956	12/20/2016	Replace 3 windows
7	5849 N Nina Ave, Chicago, IL 60631	Preschool	1919	12/23/2016	Replace 3 windows
8	4936 N Winchester Ave, Chicago, IL 60640	Multi-Family	1900	12/29/2016	Replace 10 windows
9	4502 N Paulina St, Chicago, IL 60640	Multi-Family	1902	1/3/2017	Replace 50 windows
10	2845 N Lowell Ave, Chicago, IL 60641	Single-Family	1927	2/3/2017	Replace 21 windows
11	4741 N Beacon St, Chicago, IL 60640	Multi-Family	1901	2/17/2017	Replace 62 windows
12	847 N Trumbull Ave, Chicago, IL 60651	Single-Family	1900	2/20/2017	Replace 17 windows
13	2909 N Neva Ave, Chicago, IL 60634	Single-Family	1947	3/24/2017	Replace 18 windows
14	2325 S 18th Ave, Broadview, IL 60155	Single-Family	1958	4/10/2017	Replace 24 windows
15	2895 N Kenneth Ave, Chicago, IL 60641	Single-Family	1889	4/12/2017	Replace 1 window
16	3721 S 53rd Ave, Cicero, IL 60804	Single-Family	1899	5/2/2017	Replace 4 windows
17	14838 Grant St, Dolton, IL 60419	Single-Family	1947	5/19/2017	Replace 17 windows
18	11143 S Saint Lawrence Ave, Chicago, IL 60628	Single-Family	1875	5/30/2017	Replace 16 windows
19	2301 W 25th St, Chicago, IL 60608	Multi-Family	1880	6/5/2017	Replace 7 windows
20	16308 University Ave, South Holland, IL 60473	Single-Family	1964	6/14/2017	Replace 1 window
21	2304 N Kildare Ave, Chicago, IL 60639	Single-Family	1909	6/21/2017	Replace 3 windows

22	3141 N Drake Ave, Chicago, IL 60618	Multi-Family	1911	7/5/2017	Replace 3 windows
23	2835 W Pratt Blvd, Chicago, IL 60645	Single-Family	1950	7/20/2017	Replace 2 windows
24	2712 W Evergreen Ave, Chicago, IL 60622	Multi-Family	1902	7/26/2017	Replace 7 windows
25	5646 N Kenmore Ave, Chicago, IL 60660	Multi-Family	1929	8/1/2017	Replace 9 windows
26	4125 W Ainslie St, Chicago, IL 60630	Multi-Family	1953	8/9/2017	Replace 36 windows
27	2441-2443 W Hollywood Ave, Chicago, IL 60659	Multi-Family	1901	8/29/2017	Replace 8 windows
28	6720 S Ashland Ave, Chicago, IL 60636	Multi-Family	1926	9/5/2017	Replace 10 windows
29	2002 S 21st Ave, Broadview, IL 60155	Single-Family	1944	9/6/2017	Replace 3 windows
30	1221 S 56th Ct, Cicero, IL 60804	Single-Family	1913	9/23/2017	Replace 6 windows
31	3122 N Kostner Ave, Chicago, IL 60641	Single-Family	1939	10/3/2017	Replace 6 windows
32	1507 N Parkside Ave, Chicago, IL 60651	Single-Family	1916	10/25/2017	Replace 12 windows
33	3254 W 84th St, Chicago, IL 60652	Single-Family	1948	10/31/2017	Replace 6 windows
34	5250 W Fletcher St, Chicago, IL 60641	Single-Family	1922	11/1/2017	Replace 4 windows
35	1825 S Lawndale Ave, Chicago, IL 60623	Single-Family	1903	11/24/2017	Replace 2 windows
36	3339 N Keeler Ave, Chicago, IL 60641	Multi-Family	1916	12/9/2017	Replace 7 windows
37	2835 W Pratt Blvd, Chicago, IL 60645	Single-Family	1949	12/15/2017	Replace 4 windows
38	700 N Mayfield Ave, Chicago, IL 60644	Multi-Family	1911	1/27/2018	Replace 6 windows
39	3046 N Haussen Ct, Chicago, IL 60618	Multi-Family	1908	2/1/2018	Replace 2 windows
40	2725 W Nelson St, Chicago, IL 60618	Single-Family	1905	2/23/2018	Replace 12 windows

44. At the 40 contracted renovations referenced in paragraph 43, Respondent performed or directed to perform modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore renovations as defined in 40 C.F.R. § 745.83.

45. The 40 renovations referenced in paragraph 43 at lines 1 to 6 and 8 to 40 were each performed at residential housing built prior to 1978, and therefore the residential housing was target housing as defined in 40 C.F.R. § 745.103.

46. The one renovation at the preschool was performed at a building constructed prior to 1978, and was visited regularly by children under 6 years of age on at least two different days within any week, with the combined weekly visits lasting at least 6 hours and the combined annual visits lasting at least 60 hours, and therefore was a child-occupied facility as defined in 40 C.F.R. § 745.83.

Count 1 – Failure to Contain the Waste from Renovation

47. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

48. 40 C.F.R. § 745.85(a)(4)(i) requires the firm performing the renovation to contain the waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

49. On November 11, 2016, Respondent completed the renovation located at 1214-1224 West Rosemont Avenue, Chicago, Illinois (November 11, 2016 Renovation) described in paragraph 43 at line 2 of the Table, but failed to contain the waste from the renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal.

50. Respondent's failure to contain the waste from the renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal during the November 11, 2016 Renovation constitutes a violation of 40 C.F.R. § 745.85(a)(4)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 2 – Failure to Clean the Work Area Until No Dust, Debris or Residue Remain

51. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

52. 40 C.F.R. § 745.85(a)(5) requires the firm performing the renovation to clean the work area until no dust, debris, or residue remain after the renovation has been completed.

53. Respondent completed the November 11, 2016 Renovation but failed to clean the work area until no dust, debris, or residue remained.

54. Respondent's failure to clean the work area until no dust, debris, or residue remained after the November 11, 2016 Renovation constitutes a violation of 40 C.F.R. § 745.85(a)(5), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 3 – Failure to Cover the Ground with Plastic Sheeting

55. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

56. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires the firm to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

57. Respondent performed the November 11, 2016 Renovation, but failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris.

58. Respondent's failure to cover ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation

or a sufficient distance to collect falling paint debris during the November 11, 2016 Renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 4 – Failure to Erect Vertical Containment or Equivalent Extra Precautions in Containing the Work Area

59. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

60. 40 C.F.R. § 745.85(a)(2)(ii)(D) requires firms performing the renovation to erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation do not contaminate other areas of the property, adjacent buildings, or adjacent properties if the renovation will affect surfaces within 10 feet of the property line.

61. Respondent performed the November 11, 2016 Renovation, but failed to erect vertical containment or equivalent extra precautions in containing the work areas to ensure that dust and debris from the renovation do not contaminate other areas of the property, adjacent buildings, or adjacent properties.

62. Respondent's failure to erect vertical containment or equivalent extra precautions in containing the work area during the November 11, 2016 Renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(D), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 5 to 8 – Failure to Obtain Written Acknowledgement From the Owner for Common Area Renovations

63. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

64. From November 4, 2016 to December 29, 2016, Respondent performed renovations in the common areas of four locations of multi-unit target housing, as described in lines 1, 2, 4 and 8 of the Table in paragraph 43, and failed to either obtain from each owner a written acknowledgment that the owner had received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovations; and failed to post informational signs in areas likely to be seen by occupants of the affected units describing the general nature and locations of each renovation and accompanied by a posted copy of the pamphlet or information on how occupants can review and/or obtain a copy of the pamphlet.

65. Respondent's failure either to obtain from each of the four owners of multi-unit target housing the written acknowledgments that each owner had received the pamphlet or to obtain a certificate of mailing at least seven days prior to the renovations; and failure to post informational signs in areas in the multi-unit target housing, constitutes four violations of 40 C.F.R. § 745.84(b)(1)-(2), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 9 to 12 – Failure to Prepare, Sign, and Date Statement Describing Steps Performed

To Notify All Occupants of Intended Renovation Activities

66. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

67. From November 4, 2016 to December 29, 2016, Respondent performed renovations in the common areas of four locations of multi-unit target housing, as described in lines 1, 2, 4 and 8 of the Table in paragraph 43, and failed to prepare, sign, and date statements describing the steps performed to notify all occupants of the intended renovation activities in each of the four multi-unit target housing and to provide the pamphlet.

68. Respondent's failure to prepare, sign, and date statements describing the steps performed to notify all occupants of the intended renovation activities in each of the four locations of multi-unit target housing, and failure to provide the pamphlet, constitutes four violations of 40 C.F.R. § 745.84(b)(3), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 13 to 15 – Failure to Obtain Written Acknowledgement From the Owners of Single-

Family Housing

69. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

70. From November 23, 2016 to December 20, 2016, Respondent performed renovations in three locations of single-family target housing, described in lines 3, 5, and 6 of the Table in paragraph 43, and failed to obtain from each owner the written acknowledgments that each owner had received the pamphlet, or obtain for each location a certificate of mailing at least seven days prior to the renovations.

71. Respondent's failure to obtain from each owner of the three locations of the single-family target housing, as described in lines 3, 5, and 6 of the Table in paragraph 43, the written acknowledgement that each owner had received the pamphlet, or obtain a certificate of mailing at least seven days prior to the renovations, constitutes three violations of 40 C.F.R.

§ 745.84(a)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 16 - Failure to Obtain Written Acknowledgement From the Owner of a Child-

Occupied Facility

72. Complainant incorporates paragraphs 1 through 46 of this Complaint as if set forth in this paragraph.

73. On December 23, 2016, Respondent performed a renovation in a preschool, described in line 7 of the Table in paragraph 43, and failed to obtain from the owner of the preschool building a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least seven days prior to the renovation.

74. Respondent's failure to obtain from the owner of a child-occupied facility a written acknowledgement that the owner has received the pamphlet, or to obtain a certificate of mailing at least seven days prior to the renovation, constitutes a violation of 40 C.F.R. § 745.84(c)(1)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 17 – Failure to Prepare, Sign, and Date Statement Describing Steps Performed To Notify All Parents and Guardians of Intended Renovation Activities

75. Complainant incorporates paragraphs 1 through 46 of this Complaint as if set forth in this paragraph.

76. On December 23, 2016, Respondent performed a renovation in a preschool, described in line 7 of the Table in paragraph 43, and failed to prepare, sign and date a statement describing the steps performed to notify all parents or guardians of children frequenting the preschool of the intended renovation activities and to provide the pamphlet.

77. Respondent's failure to prepare, sign and date a statement describing the steps performed to notify all parents or guardians of children frequenting the child-occupied facility of the intended renovation activities and to provide the pamphlet constitutes a violation of 40 C.F.R. § 745.84(c)(3), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

**Counts 18 to 22 – Failure to Retain All Records Necessary to Demonstrate Compliance
with 40 C.F.R. Part 745, Subpart E**

78. Complainant incorporates paragraphs 1 through 46 of this Complaint as if set forth in this paragraph.

79. 40 C.F.R. § 745.86(b)(6) requires a firm to retain the following records:

- a. Documentation of compliance with the work practice standards in 40 C.F.R. § 745.85,
- b. Documentation that a certified renovator was assigned to the project,
- c. Documentation that the certified renovator provided on-the-job training for workers used on the project,
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and
- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

80. In all 40 contracted renovations from November 4, 2016 to February 23, 2018, described in paragraph 43, Respondent failed to retain:

- a. Documentation of compliance with the work practice standards in 40 C.F.R. § 745.85,
- b. Documentation that a certified renovator was assigned to the project,
- c. Documentation that the certified renovator provided on-the-job training for workers used on the project,
- d. Documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a), and

- e. Documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

81. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of all 40 contracted renovations described in paragraph 43 constitutes five violations of 40 C.F.R. § 745.86(b)(6), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Civil Penalty

82. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action was \$38,105. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

83. Within 30 days after the effective date of this CAFO, Respondent must pay the \$38,105 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The cashier's check or certified check must note the following: the case title ("In the Matter of Continental Window and Glass Corporation,") and the docket number of this CAFO.

84. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 83. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Christina Saldivar (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Josh Zaharoff (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

85. This civil penalty is not deductible for federal tax purposes.

86. If Respondent does not timely pay the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

87. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount

90 days past due.

Supplemental Environmental Project

88. Respondent must complete a supplemental environmental project (SEP) designed to protect the public health by voluntarily implementing the following community lead-based paint hazard inspection and tenant assistance program as set forth.

89. Respondent must complete the SEP as follows:

- a. Respondent will complete the work as described in Appendix A within two years of the effective date of this CAFO.
- b. Respondent has selected the Metropolitan Tenants Organization (“MTO”) to implement this SEP. Respondent may select a different entity to assist with implementation of the SEP, but must provide EPA with notice of the change and a description of the new entity’s qualifications in advance. EPA has the right to disapprove a SEP implementer if it does not have substantial experience in lead-based paint hazard risk identification and citizen outreach work.

90. Respondent must fund an escrow account in accordance with Exhibit B to this Agreement to provide the funds required for the staff, travel, materials, and other elements of the work to the entity implementing the SEP described in paragraph 89.

91. Respondent must spend at least \$110,000 to implement the SEP.

92. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA’s approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$110,000;

- b. That, as of the date of executing this Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Order;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That 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;
- g. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and
- h. Respondent certifies that it has inquired of the SEP recipient (and implementor if applicable) whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient that it is not a party to such a transaction.

93. Respondent must submit a SEP interim report to EPA by no later than 425 calendar days after the effective date of this CAFO. Respondent may rely on a notarized certification from

an executive of the MTO as to the facts reported in the interim report. At a minimum, the interim report must contain the following:

- a. Deliverables
 - i) Number of calls received on tenant rights hotline in which lead-based paint hazards were discussed with the caller.
 - ii) Number of completed visual inspections requested or agreed to by tenants.
 - iii) Number of lead-based paint hazard remediation projects started.
 - iv) Number of lead-based paint hazard remediation projects completed, including a breakdown of the following:
 - (1) Number of lead-based paint hazard remediation projects initiated by landlord.
 - (2) Number of lead-based paint hazard remediation projects initiated by a lead abatement order by Chicago Department of Public Health.
 - (3) Number of lead-based paint hazard remediation activities initiated by the tenant.
- b. For each of the deliverables in subparagraph 93.a. above, a breakdown:
 - i) By location, i.e., neighborhood or zip code;
 - ii) By whether the residential unit was occupied by a child under age six, if known; and,
 - iii) The duration measured in hours to complete each category of deliverables.
- c. Documentation that the individuals doing visual inspections described in subparagraph 93.a.ii have completed Healthy Homes inspector training or a comparable training program.

- d. Description of any operating problems and the actions taken to correct the problems;
- e. Itemized costs of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, canceled checks or other documents that specifically identify and itemize the individual costs of the goods and services; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

94. Respondent must submit a SEP completion report to EPA by no later than 60 days after the completion of the SEP, or 425 days from the effective date hereof, whichever is later. At a minimum, the report must contain the following:

- a. The items listed in Paragraph 93 above; and
- b. Certification that Respondent has completed the SEP in compliance with this CAFO.

95. Respondent must submit all notices and reports required by this CAFO by first class mail to Christina Saldivar of the Pesticides and Toxics Compliance Section at the address provided in paragraph 84 above.

96. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

97. Following receipt of the SEP completion report described in paragraph 94, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 99, below.

98. If EPA exercises option 97.b., above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 100, below.

99. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b and c, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 94, Respondent must pay a penalty of \$125,000. Respondent may request that EPA exercise its discretion pursuant to Paragraph 100 to reduce this stipulated penalty by the amount spent by Respondent to complete the SEP.

- b. If Respondent did not complete the SEP satisfactorily, but EPA determines after consultation with Respondent that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 91, Respondent will not be liable for any stipulated penalty under subparagraph 99.a., above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 91, Respondent must pay a penalty of \$20,000.
- d. If Respondent did not submit timely the SEP interim report or SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$400	31 st day and beyond

100. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

101. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

102. Respondent must pay any stipulated penalties within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 83, above, and will pay interest, handling charges and penalties on overdue amounts

as specified in paragraph 87, above.

103. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

104. Any public statement that Respondent makes referring to the SEP must include the following language, "Continental Window and Glass Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Continental Window and Glass Corporation for violations of the Lead Renovation, Repair and Painting Program Rule."

Retention of Records

105. Respondent must retain all records required to demonstrate compliance with TSCA, including but not limited to all records that Respondent would be required to retain under 40 C.F.R. § 745.86 and all records related to the violations alleged in this CAFO, for a period of two years after the effective date of this CAFO.

General Provisions

106. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: zaharoff.josh@epa.gov (for Complainant), hsheldon@hinshawlaw.com and mwalsh@hinshawlaw.com (for Respondent).

107. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

108. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

109. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based

Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

110. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

111. The terms of this CAFO bind Respondent and its successors and assigns.

112. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

113. Each party agrees to bear its own costs and attorney's fees in this action.

114. This CAFO constitutes the entire agreement between the parties.

115. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of: Continental Window and Glass Corporation
Docket No.**

Exhibit A

Supplemental Environmental Project Description

Continental Window and Glass Corporation (Respondent) will implement a lead-based paint health risk reduction project, which will target the low-income tenant population in Chicago, particularly families with children under the age of six residing in residential units in housing constructed prior to 1978, for whom lead-based paint is typically a more significant risk than for the population at large. Respondent has selected the Metropolitan Tenants Organization (MTO) to implement this SEP, and may propose to change the implementer, as described in the Consent Agreement / Final Order (CAFO). Respondent shall ensure that Implementer (MTO or any other recipient) will complete the work as follows:

Implementer will identify potential at-risk tenants via phone call inquiries to its tenant rights hotline and via referrals from outside entities, and upon determining that a tenant may be at risk of lead-based paint health hazards, Implementer will suggest that the tenant get an inspection of his/her residential unit.

When a tenant agrees to an inspection, Implementer will conduct a visual inspection of the tenant's residential unit to identify the presence of lead-based paint hazards. In instances where Implementer determines that a lead-based paint hazard appears likely to exist in the residential unit, Implementer will provide ongoing support to the tenant to address the identified lead-based paint hazard until Implementer's assistance is no longer needed. This support work will include, as appropriate:

1. Coordinating with the City of Chicago Health Department to conduct a lead hazard home inspection at the tenant's residential unit by a certified lead inspector or certified lead risk assessor.
2. Assisting the tenant to coordinate with the landlord and/or the City of Chicago Health Department to abate any lead-based paint hazards in the residential unit in a lead-safe manner by providing information at a minimum to the tenant and landlord on federal, state, and local regulations governing lead-based paint activities.
3. Assisting the tenant to find an alternative living space that has little or no lead-based paint hazard risk.
4. Any other work that Implementer deems necessary to support the tenant in furtherance of the goal of reducing lead-based paint hazards in a lead-safe manner.

Implementer will track the number of calls received, inspections, remediation efforts initiated, remediation efforts completed, and the geographic location and presence or absence of a child under age six (if known) for each aspect of the project work, as described in the CAFO.

Implementer is expected to complete the following project activities: contact 300 tenants, conduct 150 visual inspections, and complete lead-based paint hazard remediation work at 50 units; and spend a minimum of \$110,000 in pursuit of the project activities. EPA may determine that a lesser number of project activities constitutes satisfactory completion of the SEP, consistent with Paragraph 97 of the CAFO, if the SEP Report provides a sufficient basis for that determination. If Implementer completes the 300 contacts, 150 visual inspections, and 50 completed remediations, but has not yet spent the full \$110,000, Implementer will continue to perform the project activities until the project funds are exhausted.

Implementer shall cooperate with Respondent and shall furnish Respondent accurate information required or reasonably necessary for Respondent to file reports with EPA under its Consent Agreement and Final Order with EPA that require the performance of the SEP.

Consent Agreement and Final Order
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Exhibit B
Escrow Agreement

This Exhibit B is part of the Consent Agreement and Final Order (CAFO). This Exhibit governs the obligations of Continental Window and Glass Corporation (Continental) to pay timely the Metropolitan Tenants Organization (MTO) for the Supplemental Environmental Project (SEP) respecting lead-based paint counseling in Chicago.

An Escrow agreement is hereby created to receive moneys for the SEP from Continental and to pay MTO. The escrow holder shall be the law firm of Hinshaw & Culbertson LLP (Hinshaw), and all moneys in escrow shall be held in a trust account for the benefit of Continental and MTO.

In consideration of the terms of settlement of the violations alleged in the August 2, 2018 notice letter from EPA concerning lead-based paint related activities, and in addition to the civil penalty required to be timely paid by Paragraph 82 of the CAFO, Continental shall execute and deposit with the escrow holder a non-negotiable Note payable to MTO in the amount of \$110,000.00, in form reasonably satisfactory to EPA. The Note shall include a confession of judgment of all payments past due and owing from Continental for the SEP, together with express agreement to pay the costs of collection to MTO. Judgment shall be obtainable in the Circuit Courts of Cook County, Illinois.

Commencing no later than 60 days from the effective date of the CAFO, and every 30 days thereafter for a total of six payments, Continental shall pay and deposit into the escrow the sum of \$18,333.34 ("the sum"), such that the total sum paid in shall be \$110,000.04. The escrow holder shall send e-mail or other written notice to both EPA and MTO of receipt of the payment, and the escrow holder shall pay the sum to MTO within fifteen days of receipt of the payment.

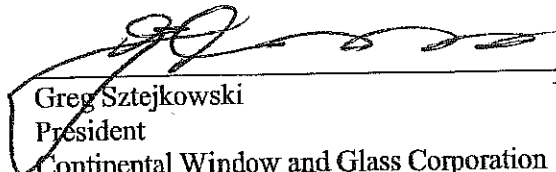
For purposes of collection of past due SEP payments, action on the Note may commence if a payment is more than thirty days past due. In the event a payment is more than 30 days past due, the escrow holder shall deliver the original Note to MTO via courier delivery, with a copy of the transmittal being sent to Continental and to EPA via email.

Continental agrees that the performance of the role and duties of escrow holder by Hinshaw under this Escrow Agreement shall not be deemed a conflict of interest or other breach of duty of Hinshaw to Continental, nor shall it be cause for Hinshaw to be unable to continue to fully represent and furnish legal services to Continental. Continental further affirms that it has been informed of its right to seek independent counsel's advice respecting the entry into this Escrow Agreement and designating Hinshaw as the escrow holder.

Consent Agreement and Final Order
In the Matter of: Continental Window and Glass Corporation
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Continental Window and Glass Corporation

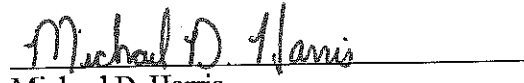
02/11/2020
Date



Greg Szejkowski
President
Continental Window and Glass Corporation

United States Environmental Protection Agency, Complainant

02/21/2020
Date



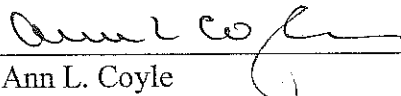
Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Consent Agreement and Final Order
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

2/25/2020
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the Matter of: Continental Window and Glass Corporation

Docket Number: TSCA-05-2020-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on February 28, 2020, this day in the following manner to the addressees:

Copy by e-mail to

Attorneys of Respondent:

Mr. Harvey Sheldon
Hinshaw & Culbertson LLP
hsheldon@hinshawlaw.com

Mr. Matthew Walsh
Hinshaw & Culbertson LLP
mwalsh@hinshawlaw.com

Copy by e-mail to

Attorney of Complainant:

Josh Zaharoff
zaharoff.josh@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: February 28, 2020



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5