

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of )

PAUL AND CONNIE RASMUSSEN )

Wakarusa, Kansas )

Docket No. TSCA-07-2006-0234

Respondents )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Paul and Connie Rasmussen (Respondents) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**FACTUAL ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known*

*Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential*

*Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

**Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondents are Paul and Connie Rasmussen, individuals whose mailing address is 3201 SW 93<sup>rd</sup> Street, Wakarusa, Kansas 66546. Respondents own the property located at 725 SE 34<sup>th</sup> Street, Topeka, Kansas 66605.

**Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence

of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

### Alleged Violations

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

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

8. Respondent is the "lessor", as that term is defined by 40 C.F.R. § 745.103, of 725 SE 34<sup>th</sup> Street, Topeka, Kansas 66605.

9. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent entered into a contract to lease 725 SE 34<sup>th</sup> Street, Topeka, Kansas 66605 on or about July 15, 2004.

11. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

12. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**CONSENT AGREEMENT**

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

14. Respondent neither admits nor denies the factual allegations set forth above; however, Respondent specifically denies that there was any violation of federal, state, or local laws by Respondent or on Respondent's behalf.

15. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

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

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$770 to be paid within thirty (30) days of the effective date of the Final Order. Payment of the civil penalty shall resolve all civil and administrative claims of the EPA alleged above and for any other civil or administrative claims of the EPA arising out of the information provided by Respondent to EPA on or about January 10, 2005.

19. The effect of settlement described in Paragraph 18 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 17 above.

20. In settlement of this matter, Respondent agrees to complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

- a) Respondent will contract, at a cost of \$3,200, for installation of eleven (11) replacement windows and two (2) stormdoors at 1220 SW Buchanan Street, Topeka, Kansas 66604, a property built in 1920. Respondent agrees that the abatement work shall only be performed by a firm with whom Respondent has entered into a contract, attached hereto as Exhibit A and incorporated herein by reference, which has been certified by the State of Kansas to perform lead-based paint abatement activities, as that term is defined in 40 C.F.R. § 745.223.
- b) Respondent will contract, at a cost of \$2,295, for installation of nine (9) replacement windows at 1245 SE Pinecrest Drive, Topeka, Kansas 66605, a property built in 1952. Respondent agrees that the abatement work shall only be performed by a firm with whom Respondent has entered into a contract, attached hereto as Exhibit B and incorporated herein by reference, which has been certified by the State of Kansas to perform lead-based paint abatement activities, as that term is defined in 40 C.F.R. § 745.223.
- c) Respondent will contract, at a cost of \$1,530, for installation of six (6) replacement windows at 1233 SE Pinecrest Drive, Topeka, Kansas 66605, a property built in 1952. Respondent agrees that the abatement work shall only be performed by a firm with whom Respondent has entered into a contract, attached hereto as Exhibit C and incorporated herein by reference, which has been certified by the State of Kansas to perform lead-based paint abatement activities, as that

term is defined in 40 C.F.R. § 745.223.

21. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to Kansas Department of Health and Environment informing the state of its intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

22. The total expenditure for the SEP shall be not less than \$7,025 and the SEP shall be completed no later than 120 days from 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.

23. Within thirty (30) days of completion of the SEP, Respondent 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 Respondents

**I 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. I am 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:  
Christine Hoard, ARTD/RALI  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

As to the State:  
Michelle Miller  
Kansas Dept. of Health and Environment  
1000 SW Jackson, Ste 200  
Topeka, Kansas 66612-1274

24. In the event that Respondent fails 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, Respondent 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, Respondent shall pay a stipulated penalty of \$6,930.

(ii) If the SEP is completed to the satisfaction of EPA, but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty of \$693.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

25. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not

presently negotiating to receive, credit in any other enforcement action for the SEP.

26. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

27. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 18 above or any portion of a stipulated penalty as stated in Paragraph 24 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, 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. Respondent shall pay a mitigated civil penalty of \$770 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:



EPA-Region 7  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

This payment shall reference Docket Number TSCA-07-2006-0234.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Sarah Thibos, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

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

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

**RESPONDENTS**  
**PAUL AND CONNIE RASMUSSEN**

Date: 11/6/06

By: 

Paul Rasmussen  
Print Name

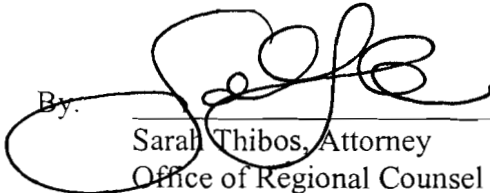
OWNER  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 11/15/06

By: Naima Halim Chestnut  
Naima Halim-Chestnut, Acting Branch Chief  
Radiation, Asbestos, Lead and Indoor Programs Branch

Date: 11/15/06

By:   
Sarah Thibos, Attorney  
Office of Regional Counsel

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

Date: November 16, 2006

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

Santa Fe Siding Company  
 3941 E 165th  
 Overbrook, KS 66524

# Proposal

Date	Estimate #
10/6/2006	26

<b>Santa Fe Siding Company</b>
Paul Rasmussen 3201 SW 93rd Wakarusa, KS 66546

<b>Project</b>
1220 Buchannon

Item	Description	Qty	Rate	Total
Window	Remove and replace 11 Windows and 2 Storm Doors		3,200.00	3,200.00

<b>Subtotal</b>	\$3,200.00
<b>Sales Tax (6.3%)</b>	\$0.00
<b>Total</b>	\$3,200.00

Price is good for 30 days.  
 Payment is to be made upon successful completion of the project. Accounts not paid within 30 days of invoice subject to 24% finance charge.  
 Manufacturer or supplier guarantees material. Workmanship is covered by a one year installation warranty.

Please sign one copy and return to SFS. Retain one copy for your records.

Phone #	Fax #	E-mail
785-665-3365	785-665-3365	bob_ellis66524@yahoo.com

Signature \_\_\_\_\_

EXHIBIT A

**Santa Fe Siding Company**

3941 E 165th  
Overbrook, KS 66524

**Proposal**

Date	Estimate #
10/4/2006	24

<b>Santa Fe Siding Company</b>
Paul Rasmussen 3201 SW 93rd Waukesha, KS 66546

<b>Project</b>
1245 Pinecrest

Item	Description	Qty	Rate	Total
Window		9	255.00	2,295.00
			<b>Subtotal</b>	\$2,295.00
			<b>Sales Tax (6.3%)</b>	\$0.00
			<b>Total</b>	\$2,295.00

Price is good for 30 days.  
Payment is to be made upon successful completion of the project. Accounts not paid within 30 days of invoice subject to 24% finance charge.  
Manufacturer or supplier guarantees material. Workmanship is covered by a one year installation warranty.

Please sign one copy and return to SFS. Retain one copy for your records.

<b>Phone #</b>	<b>Fax #</b>	<b>E-mail</b>
785-665-3363	785-665-3363	bob_ellis66524@yahoo.com

Signature \_\_\_\_\_

EXHIBIT B

**Santa Fe Siding Company**

3941 E 165th  
Overbrook, KS 66524

**Proposal**

Date	Estimate #
10/4/2006	23

<b>Santa Fe Siding Company</b>
Paul Rasmussen 3201 SW 93rd Wakarusa, KS 66546

Project

Item	Description	Qty	Rate	Total
Window		6	255.00	\$1530
			<b>Subtotal</b>	\$1530
			<b>Sales Tax (6.3%)</b>	\$0.00
			<b>Total</b>	\$1530

Price is good for 30 days.  
Payment is to be made upon successful completion of the project. Accounts not paid within 30 days of invoice subject to 24% finance charge.  
Manufacturer or supplier guarantees material. Workmanship is covered by a one year installation warranty.

Please sign one copy and return to SFS. Retain one copy for your records.

Phone #	Fax #	E-mail
785-665-3365	785-665-3365	bob_ellis66524@yahoo.com

Signature \_\_\_\_\_

EXHIBIT C

IN THE MATTER OF Paul and Connie Rasmussen, Respondent  
Docket No. TSCA-07-2006-0234

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:

Sarah Thibos  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Paul and/or Connie Rasmussen  
3201 SW 93rd Street  
Wakarusa, Kansas 66546

11/17/06  
Dated

  
Kathy Robinson  
Hearing Clerk, Region 7