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27 December 2010

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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PROTECTION AGENCY

VIA FEDEX

Re: Docket No. TSCA-05-2010-0013

Dear Madam or Sir:

Enclosed herein, please find one (1) original and one (1) copy of Respondent's Reply to Complainant's Response to Respondent's Motion for Interlocutory Appeal and one (1) original and one (1) copy of Respondent's Amended Answer to Amended Administrative Complaint.

Respectfully,

Kevin M. Tierney, Esq.

cc: Hanson's Window and Construction, Inc.
Enclosure (4)

1400 N. 14TH STREET
ARLINGTON, VIRGINIA 22209

201 SHANNON OAKS CIRCLE, SUITE 200
CARY, NORTH CAROLINA 27511

1792 SECOND STREET
NAPA, CALIFORNIA 94559

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Hanson's Window and Construction, Inc.	)	**Docket No. TSCA-05-2010-0013**
	)	

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Respondent's Reply to Complainant's Response to Respondent's Motion for Interlocutory Appeal

In accordance with *40 C.F.R. §22.16(b)*, Respondent files this, its Reply to Complainant's Response to Respondent's Motion for Interlocutory Appeal. Respondent, Hanson's Window and Construction, Inc., asks the Presiding Officer to GRANT Respondent's Motion for Interlocutory Appeal.

A. Respondent's Motion Involves an Important Question of Law or Policy Concerning Which There Is Substantial Grounds for Difference of Opinion

In response to Complainant's Response to Respondent's Motion for Interlocutory Appeal, given Complainant's contention that no controlling question of law or policy exists, Respondent reiterates the substantial legal and policy implications of whether Complainant's Administrative Complaint, by alleging Respondent failed to comply with legal requirements that did not exist in 2005, and could never have been complied with, provided fair notice to Respondent of the allegations against Respondent.

Respondent's Motion for Interlocutory Appeal does not particularly question the applicable law in this case, as Respondent generally acknowledges the standard announced in Ashcroft v. Iqbal and the liberal nature of pleading rules. 129 S.Ct. 1937, 1950 (2009). Rather,

Respondent filed its Motion for Interlocutory Appeal because it respectfully disagrees with the Court's application of the *facts of this case* to the applicable legal standard.

As raised in Respondent's Motion for Interlocutory Appeal, Respondent agrees with the Court that the broad overarching requirement to distribute lead hazard information to the owners and tenants of housing no more than 60 days before beginning renovations has not changed between the 1998 Pre-Renovation Rule and the 2008 Pre-Renovation Rule. However, the requirements as to (1) when such lead hazard information was to be provided, (2) when it was not to be provided, (3) the penalties for failing to provide it, and (4) the very content and form of *what* information was to be provided, was radically and materially altered between the two rules, which changes are discussed *supra*.

1. **Complainant's Primary Narrative Portion of the Administrative Complaint Is Replete with Errors.**

In its Response to Respondent's Motion for Interlocutory Appeal, Complainant states "[a]lthough the original Complaint cites to the recodified Residential Property Renovation Rule rather than the original regulatory citations, the Complaint did provide fair notice to Respondent of its alleged violations under the Residential Property Renovation Rule in effect in 2005." See *Complainant's Response to Respondent's Motion for Interlocutory Appeal, Page 3.*

From the time Respondent filed its Motion to Dismiss—thus bringing the flawed nature of the original Administrative Complaint to the parties' attention—Respondent has continually stated that it does not see the Administrative Complaint as flawed because it simply refers to the wrong legal citations. One has only to review the supporting legal definitions laid out by Complainant in the original Administrative Complaint to see that a substantial number of them,

especially those most pertaining to the allegations against Respondent, are wrong—not only as to "citation" but as to actual content.

As evidence of same, in Complainant's original Administrative Complaint, the section that Respondent respectfully submits is the narrative portion that is to provide a respondent of fair notice of the allegations against it—titled "Statutory and Regulatory Background"—includes 23 numbered paragraphs. Of these 23 numbered paragraphs, Complainant has had to strike and/or change the actual language in 11 of these paragraphs, and out of the 23 numbered paragraphs, only 5 of the paragraphs are left entirely unchanged (*involving no edits to language or to legal citations*). Many of the changes, discussed herein, are drastic.

In Paragraph 6, Complainant had to completely strike its definition of "child occupied facility" because that term did not exist in 2005. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this non-existent definition is the antithesis of fair notice. It is a red herring.

In Paragraph 8, Complainant had to completely strike its definition of "firm" because that term did not exist in 2005. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this non-existent definition is the antithesis of fair notice. It is a red herring.

In Paragraph 9, Complainant had to re-write the definition of what constitutes "minor repair and maintenance activities" to reflect the fact that (1) the measurement size for minor repair and maintenance activities is **entirely different** under the 1998 Pre-Renovation Rule

(2 square feet or less of painted surface per component) versus the 2008 Pre-Renovation Rule (6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities) and (2) that the 1998 Pre-Renovation Rule's definition of "minor repair and maintenance activities" does not include the phrase "and where the work does not involve window replacement..." (*Respondent addresses the rationale for this extraordinary definitional change infra*). This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this incorrect definition is the antithesis of fair notice. It is a red herring.

In Paragraph 10, Complainant had to nearly strike its entire definition of "pamphlet" because the actual pamphlet cited did not exist in 2005. A different pamphlet was required under the 1998 Pre-Renovation Rule. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this incorrect definition is the antithesis of fair notice. It is a red herring.

In Paragraph 11, Complainant had to strike significant portions of its definition of "renovation" because the definition of "renovation" in the original Administrative Complaint did not exist in 2005—a different definition of "renovation" applied in 2005. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this incorrect definition is the antithesis of fair notice. It is a red herring.

In Paragraph 12, Complainant had to nearly strike its entire definition of "renovator" because the definition of "renovator" in the original Administrative Complaint did not exist in 2005—a different definition of "renovator" applied in 2005. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this incorrect definition is the antithesis of fair notice. It is a red herring.

In Paragraph 16, Complainant had to completely strike the paragraph, as it refers to a "child occupied facility" because that term did not exist in 2005. This is not a citation error. Complainant presumably included this definition in the original Administrative Complaint for a reason. Respondent respectfully submits it was to provide fair notice of the allegations against Respondent, but the inclusion of this irrelevant paragraph is the antithesis of fair notice. It is a red herring.

The above represents only seven of the changes made to the original Administrative Complaint. Respondent chose to specifically recite these seven changes because they best highlight that Complainant's entire complaint is premised off the wrong law!

2. The Changes Between the 1998 Pre-Renovation Rule and the 2008 Pre-Renovation Rule Are Much More Complicated Than Complainant Contends.

Further exacerbating the confusion caused by Complainant's errors, as Respondent has noted previously, the changes between the 1998 Pre-Renovation Rule and the 2008 Pre-Renovation Rule were legally complex and operationally revolutionary, especially, Respondent submits, in regard to the application of the Pre-Renovation Rule to the business of installing

replacement windows—which is the basis for every allegation against Respondent in Complainant's Administrative Complaint.

Not surprisingly, in its Response to Respondent's Motion for Interlocutory Appeal, except as to the lead-safe work practices added by amendment, which both parties agree has no relevance to this case, Complainant maintains its previously expressed position that as to the allegations against Respondent, the changes between the 1998 Pre-Renovation Rule and the 2008 Pre-Renovation Rule are minimal, and consequently do not deprive Respondent of fair notice of the allegations against it. See *Complainant's Response to Respondent's Motion for Interlocutory Appeal, Page 7.*

In support of this position, Complainant states that the "Residential Property Renovation Rule has consistently defined "renovation" to specifically include window replacement." See *Complainant's Response to Respondent's Motion for Interlocutory Appeal, Page 4*. Therefore, Complainant argues that aside from the aforementioned new lead-safe work practices, Respondent's obligations under the Residential Property Renovation Rule have not changed. See *Complainant's Response to Respondent's Motion for Interlocutory Appeal, Page 4.* This assertion is, respectfully, legally and factually incorrect.

Simply put, the language of *40 C.F.R. 745* does not support Complainant's argument. Respondent unequivocally agrees and acknowledges that the Residential Property Renovation Rule has in fact consistently defined "renovation" to specifically include the phrase "window replacement"—with such term being explicitly listed as a type of renovation. (*the fact that such term is never defined under the 1998 Pre-Renovation Rule is a matter not of importance to this Reply*). However, as Respondent stated in its Motion for Interlocutory Appeal, the fact remains that while under the 2008 Pre-Renovation Rule, an activity defined as a "renovation" cannot also

be a "minor repair of maintenance activity", **such a mutually exclusive paradigm does not exist under the 1998 Pre-Renovation Rule**.

Rather, as Respondent also stated in its Motion for Interlocutory Appeal, *40 C.F.R. 745.82* expressly provides that while a specific activity may be defined as a "renovation", it still is not subject to the 1998 Pre-Renovation Rule if that renovation activity (*also undefined under the 1998 Pre-Renovation Rule; but presumably the same as a "renovation")* is limited to activities that disrupt 2 square feet or less of painted surface per component.[1]

In its Response to Respondent's Motion for Interlocutory Appeal, Complainant continues to ignore this and other vast differences between the 1998 Pre-Renovation Rule and the 2008 Pre-Renovation Rule. Indeed, Complainant states that there has never been an exemption allowing window replacement work to be performed out of compliance with the Residential Property Renovation regulations. See *Complainant's Response to Respondent's Motion for Interlocutory Appeal, Page 4*. A plain language reading of *40 C.F.R. 745* immediately contradicts this position. Respondent respectfully submits that Complainant is reading the law not as it is actually written; rather, Complainant is reading the law as it would like it to be written. As actually written, a "renovation" is not subject to the 1998 Pre-Renovation Rule if such renovation disrupts 2 square feet or less of painted surface per component.

While, at first blush a further discussion of this topic may appear outside the ambit of Respondent's Motion for Interlocutory Appeal, because it best highlights the fact that **both**

---

[1] The Section *745.82* exemptions are, <u>in part</u>, as follows:

> (a) Except as provided in paragraph (b) of this section, this subpart applies to all renovations of target housing performed for compensation.
>
> (b) This subpart does not apply to renovation activities that are limited to the following:
>
> (1) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.

Complainant and Respondent are fully aware of the significant differences between the 1998 and 2008 Pre-Renovation Rule, Respondent would like to address the Environmental Protection Agency's ("EPA") actions between its enactment of the 1998 Pre-Renovation Rule and its enactment of the 2008 Pre-Renovation Rule.

Specifically, on May 28, 1999, the EPA issued Interpretive Guidance that attempted to "correct" the fact that the law as written did not actually say what the EPA wanted it to say—that there has never been an exemption allowing window replacement work to be performed out of compliance with the Residential Property Renovation regulations. The May 1999 Interpretive Guidance states, in part, the following:

> *Finally, EPA wishes to clearly state that window replacements do not qualify for this exemption to the rule because (a) the definition of the term "renovation" specifically includes window replacement; and (b) replacement of a window(s) cannot reasonably be classified as "minor repair and maintenance activities."*

However, such interpretive guidance (1) is immediately contradicted by a reading of *40 C.F.R. 745*—as noted *supra*, under the 1998 Pre-Renovation Rule, there is no mutually exclusive paradigm between "renovation" and a "minor repair of maintenance activity", thus making statement (a) of the above moot and (2) is not subject to deference under *Chevron U. S. A. Inc. v Natural Resources Defense Council, 437 US 837 (1984)*. Indeed, when the EPA had occasion to amend the Residential Property Renovation regulations to add the aforementioned new lead-safe work practices, it made sure to definitively "correct" its mistake by re-writing *40 C.F.R. 745* to make it so that a "renovation" now cannot possibly be a "minor repair of maintenance activity". Only under the 2008 Pre-Renovation Rule does a mutually exclusive paradigm exist.

Respondent respectfully submits that because the EPA did not want to draw significant attention to the true scope of the changes, its verbiage in the Federal Register as to the 2008 Pre-Renovation Rule is carefully crafted to keep up the "nothing to see here" appearance. However,

once one fully appreciates the scope of the **non**-lead-safe work practices changes made in 2008, it becomes apparent that the window replacement work that forms the basis of the allegations against Respondent could be excluded from the pamphlet distribution requirements under the 1998 Pre-Renovation Rule, while this same activity could not be excluded from the pamphlet distribution requirements under the 2008 Pre-Renovation Rule.

This change, when combined with the aforementioned citational errors, the aforementioned definitional errors, that a different pamphlet that is to be provided, and the fact that the monetary penalties for failing to provide the applicable pamphlet have completely changed, makes it apparent that the 2008 Pre-Renovation Rule is not just a re-codification of the 1998 Pre-Renovation Rule; rather, it is an entirely different law—most especially as to Respondent.

3. Death By A Thousand Cuts Is Still Death

Respondent is concerned that each flaw in Complainant's original Administrative Complaint is being viewed as a simple citation error and that any narrative included in the original Administrative Complaint serves to offset these errors. As indicated previously and herein, Respondent strongly disagrees with any such conclusion. Complainant's original Administrative Complaint (1) includes repeated incorrect legal citations, (2) includes repeated definitions that either did not exist in 2005 or were defined differently in 2005, and (3) alleges that Respondent committed 542 violations of law that, in fact, may not have been violations of law under the non-mutually exclusive paradigm of the 1998 Pre-Renovation Rule.

Would a learned environmental attorney eventually figure out that the original Administrative Complaint is based off the wrong law? Counsel for Respondent did, so the answer is "yes". Would an EPA official eventually figure out that the original Administrative

Complaint is based off of the wrong law? Respondent submits that the answer is "yes". Would the person actually being sued by the federal government eventually figure out that the original Administrative Complaint is based off of the wrong law? Respondent submits that the answer is "no". Rather, the poor respondent would be chasing Complainant's citational and definitional red herrings to the point of exhaustion.

Moreover, Respondent feels compelled to reiterate that Complainant is not some misguided plaintiff seeking to understand an intricate law and incorporate same into its pleading, which Respondent respectfully submits is the primary reason why the "Federal Rules [of Civil Procedure] reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive as to the outcome..." Foman v. Davis, 371 U.S. 178, 181-82 (1962) (quoting Conley v. Gibson, 355 U.S. 41, 48 (1957)). Rather, Complainant is the *author* of, and the *chief enforcement arm* of the United States of America for *40 C.F.R. Part 745*, Subpart E!

B. An Immediate Appeal Will Materially Advance the Termination of the Litigation Whereas Subsequent Review Is Inadequate

As the Court is aware, in its administrative proceeding against Respondent, Complainant bears the burden of proving, by a "preponderance of the evidence" that the violations occurred as charged and that the relief sought is appropriate. *40 C.F.R. 22.24.*

If Respondent's Motion for Interlocutory Appeal is granted, and its underlying Motion to Dismiss is granted, when Complainant (presumably) files a new administrative complaint against Respondent, each allegation must relate to work performed within five (5) years of the new filing date. *28 U.S.C. § 2462*. Out of the 271 jobs that form the basis of Complainant's original Administrative Complaint, it appears that the vast majority will be outside of the applicable statute of limitations. Simply put, the vast majority of the jobs in Complainant's flawed

Administrative Complaint will not be in any newly administrative complaint. Instead, the parties will be litigating entirely different jobs—jobs that still fall within the applicable statute of limitations under *28 U.S.C. § 2462*.

Given this fact, and the amount of time money, and judicial resources that will be expended on each allegation, Respondent respectfully submits that subsequent review of this issue is entirely inadequate. If there is **any** question as to whether this Court's Order is correct, answering that question sooner rather than later is absolutely necessary.

C. Conclusion

Based on the foregoing, Respondent respectfully requests that the Administrative Law Judge grant Respondent's application for Environmental Appeals Board interlocutory appeal by certifying to the Environmental Appeals Board, in writing, that (i) its ruling involves an important question of law and policy as to which there exists a substantial ground for a difference of opinion and (ii) an immediate appeal will materially advance the termination of the litigation and subsequent review will be an inadequate remedy.

Respectfully submitted for
Hanson's Window and Construction, Inc.

By:

Johanson Berenson LLP
Kevin M. Tierney, Esq.
1146 Walker Road, Suite C
Great Falls, Virginia 22066
Telephone Number: (703) 759-1055
Facsimile Number: (703) 759-1051

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PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2010, the original and a true copy of the foregoing Respondent's Motion for Interlocutory Appeal from the Administrative Law Judge's ruling denying its Motion to Dismiss EPA's Administrative Complaint was filed with:

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

a true copy of the foregoing was hand delivered via courier to:

Chief Judge Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Franklin Court, Suite 350
1099 14th Street. N.W.
Washington D.C. 20005

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a true copy of the foregoing was mailed via overnight courier to:

Mary McAuliffe
Associate Regional Counsel
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kevin M. Tierney, Esq.

BEFORE THE
UNITED STATES ENVIRONMENTAL AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604

IN THE MATTER OF	)	
	)	**Docket No. TSCA-05-2010-0013**
Hanson's Window and Construction, Inc.	)	
Madison Heights, Michigan 48071	)	**Respondent's Amended Answer**
	)	**to Amended Administrative Complaint**
Respondent,	)	
	)	
______________________________	)	

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COMES NOW Respondent Hanson's Window and Construction, Inc., by and through its counsel, and in Answer to the Amended Administrative Complaint states as follows:

1. In responding to Paragraph 1, Respondent admits that the instant Complaint commenced a purported administrative proceeding against Respondent, seeking to assess a civil penalty under the Toxic Substances Control Act (TSCA), *15 USC 2615(a).*

2. Paragraph 2 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

3. In responding to Paragraph 3, Respondent states that Hanson's Window and Construction, Inc., is a corporation, 800–Hansons is a trade name belonging to Respondent, 1-800-Hansons is a trade name belonging to Respondent, Hanson's Window & Siding World is an assumed name belonging to Respondent, Hanson's Window & Siding is an assumed name belonging to Respondent, and Hanson's Window Company is an assumed name belonging to Respondent.

4. In responding to Paragraph 4, Respondent is without knowledge as to what Congress "found" as to low-level poisoning and states that the Congressional record is its own best evidence of Congressional findings. As to the remaining allegations in Paragraph 4, such

allegations call for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

5. Paragraph 5 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

6. Paragraph 6 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

7. Paragraph 7 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

8. Paragraph 8 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

9. In responding to Paragraph 9, Respondent states that *40 C.F.R. §745.223* is its own best evidence as to the definition of *common area.*

10. In responding to Paragraph 10, Respondent states that *40 C.F.R. §745.82(a)(1)* is its own best evidence as to the definition of *minor repair and maintenance activities*.

11. In responding to Paragraph 11, Respondent states that *40 C.F.R. §745.83* is its own best evidence as to the definition of *pamphlet*.

12. In responding to Paragraph 12, Respondent states that *40 C.F.R. §745.83* is its own best evidence as to the definition of *renovation.*

13. In responding to Paragraph 13, Respondent states that *40 C.F.R. §745.83* is its own best evidence as to the definition of *renovator*.

14. In responding to Paragraph 14, Respondent states that *40 C.F.R. §745.103* is its own best evidence as to the definition of *residential dwelling.*

15. In responding to Paragraph 15, Respondent states that *40 C.F.R. §745.103* is its own best evidence as to the definition of *target housing.*

16. In responding to Paragraph 16, Respondent states that *40 C.F.R. §745.85(a)(1)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

17. In responding to Paragraph 17, Respondent states that *40 C.F.R. §745.86(a)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

18. In responding to Paragraph 18, Respondent states that *40 C.F.R. §745.86(b)(2)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

19. In responding to Paragraph 19, Respondent states that *40 C.F.R. §745.86(b)(3)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

20. In responding to Paragraph 20, Respondent states that *40 C.F.R. §745.86(b)(4)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

21. In responding to Paragraph 21, Respondent states that *40 C.F.R. §745.86(b)(5)* is its own best evidence as to the requirements imposed on firms performing renovations in target housing.

22. Paragraph 22 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

23. Paragraph 23 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

24. In responding to Paragraph 24, Respondent states that no response is required.

25. In responding to Paragraph 25, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

26. Admitted.

27. Admitted.

28. In responding to Paragraph 28, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

29. In responding to Paragraph 29, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

30. In responding to Paragraph 30, Respondent admits that Complainant issued a subpoena to Respondent, but states that the subpoena is its own best evidence as to the documentation/information sought.

31. Admitted.

32. Admitted.

33. Admitted.

34. In responding to Paragraph 34, Respondent admits that Complainant issued a subpoena to Respondent, but states that the subpoena is its own best evidence as to the documentation/information sought.

35. In responding to Paragraph 35, Respondent admits that Complainant issued a March 19, 2010, letter to Respondent, but states that the letter is its own best evidence as to the issue(s) addressed therein.

36. Denied.

37. To the extent Paragraph 37 alleges that Respondent entered into written work contracts for window replacement work to take place at the addresses listed, admitted. No response appears otherwise required to the statements in Paragraph 37.

38. In responding to Paragraph 38, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

39. In responding to Paragraph 39, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

40. In responding to Paragraph 40, Respondent admits that a legal representative for Respondent provided Complainant with tax returns and financial information for Respondent, but denies the remaining allegations.

41. In responding to Paragraph 41, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

42. In responding to Paragraph 42, Respondent admits that Complainant issued a June 4. 2010, letter to Respondent, but states that the letter is its own best evidence as to the issue(s) addressed therein.

43. In responding to Paragraph 43, Respondent lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

44. Denied. Respondent further notes that in it original Administrative Complaint, Complainant stated that "[o]n June 7, 2010, Respondent's counsel sent EPA a letter responding to the pre-filing notice letter referred to in Paragraph 42…" With Complainant having previously acknowledged that Respondent did in fact reply to Complainant's June 4. 2010, letter, Respondent is at a loss to understand why Complainant now states that Respondent did not reply to Complainant's June 4, 2010, letter.

45. Denied.

46. In responding to Paragraph 46, Respondent states that no response is required.

47. Paragraph 47 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

48. – 318. To the extent Paragraphs 48 through 318 call for a legal conclusion, no response is required, otherwise all allegations in Paragraphs 48 through 318 are denied.

319. To the extent Paragraph 319 calls for a legal conclusion, no response is required, otherwise all allegations in Paragraph 319 are denied.

320. In responding to Paragraph 320, Respondent states that no response is required.

321. Paragraph 321 calls for a legal conclusion to which no response is required. To the extent that it might be deemed to allege facts, those allegations are denied.

322 – 592. To the extent Paragraphs 322 through 592 call for a legal conclusion, no response is required, otherwise all allegations in Paragraphs 322 through 592 are denied.

593. To the extent Paragraph 593 calls for a legal conclusion, no response is required, otherwise all allegations in Paragraph 593 are denied.

594. With respect to the "Proposed Civil Penalty" set forth in Counts 1 through 542 under Paragraph 594, which counts total an alleged Proposed Civil Penalty of $784,380, such allegations in paragraph 594 are denied.

Affirmative Defense

Respondent states the following affirmative defenses, and expressly reserves the right to amend this Amended Answer to raise additional affirmative defenses as may arise during the course of discovery and information exchange in this matter:

Affirmative Defense No. 1

Complainant is barred under *28 U.S.C. § 2462* from initiating an enforcement action seeking the assessment of a civil penalty as to any job that precedes June 9, 2005.

Affirmative Defense No. 2

Complainant is barred by the doctrine of laches.

Affirmative Defense No. 3

Complainant has no right to relief. *40 C.F.R. §22.20(a)*.

Request for Hearing

Respondent hereby requests a hearing on this matter.

Respectfully submitted for
Hanson's Window and Construction, Inc.

By:

Johanson Berenson LLP
D.S. Berenson, Esq.
Kevin M. Tierney, Esq.
1146 Walker Road, Suite C
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Facsimile Number: (703) 759-1051

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2010, the original and a true copy of the foregoing Respondent's Amended Answer to Amended Administrative Complaint was served on the following person(s) via overnight FedEx:

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

a true copy of the foregoing was mailed via overnight courier to:

Chief Judge Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460-2001

a true copy of the foregoing was mailed via overnight courier to:

Mary McAuliffe
Associate Regional Counsel
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kevin M. Tierney, Esq.

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