



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

April 22, 2011

REPLY TO THE ATTENTION OF
E-19J

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

RE: In The Matter of: *Hanson's Window and Construction, Inc.*
Docket No.: TSCA-05-2011-0006
Complaint Date: March 28, 2011
Total Proposed Penalty: \$144,840.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for *Hanson's Window and Construction, Incorporated* in Madison Heights, Michigan.

Please assign an Administrative Law Judge for this case. If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in blue ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Kevin M. Tierney, Esquire
Johanson Berenson LLP
Attorneys & Counselors At Law
1146 Walker Road, Suite C
Great Falls, Virginia 22066
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Mary McAuliffe, Esquire
Associate Regional Counsel
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U.S. EPA, Region 5
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21 April 2011

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

VIA FEDEX

Re: Docket No. TSCA-05-2011-0006

Dear Madam or Sir:

Enclosed herein, please find one (1) original and one (1) copy of Respondent's Answer to EPA's Administrative Complaint. A copy of same has been served on all parties pursuant to *40 CFR 22.16* and *40 CFR 22.5*.

Respectfully,



Kevin M. Tierney, Esq.

cc: Mary McAuliffe, USEPA

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PROTECTION AGENCY**

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

IN THE MATTER OF)
)
Hanson's Window and Construction, Inc.)
Madison Heights, Michigan 48071)
Respondent,)
)
)
_____)

Docket No. TSCA-05-2011-0006

**Respondent's Answer
to Administrative Complaint**

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PROTECTION AGENCY**

COMES NOW Respondent Hanson's Window and Construction, Inc., by and through its counsel, and in Answer to the 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. Admitted.

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 lacks sufficient information to affirm or deny the allegations and leaves Complainant to its strict proofs.

41. Admitted, noting that the Complainant's letter was dated December 30, 2010; not December 20, 2010.

42. Admitted, noting that Respondent has advised Complainant on multiple occasions that it does not intend to provide ability to pay information to Complainant at this time.

43. In responding to Paragraph 43, Respondent admits that Complainant issued a March 7, 2011, letter to Respondent, but states that the letter is its own best evidence as to the issue(s) addressed therein.

44. Admitted.

45. Admitted.

46. Paragraph 46 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.

47. – 99. To the extent Paragraphs 47 through 99 call for a legal conclusion, no response is required, otherwise all allegations in Paragraphs 47 through 99 are denied.

100. To the extent Paragraph 100 calls for a legal conclusion, no response is required, otherwise all allegations in Paragraph 100 are denied.

101. In responding to Paragraph 101, Respondent states that no response is required.

102. Paragraph 102 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.

103 – 153. To the extent Paragraphs 103 through 153 call for a legal conclusion, no response is required, otherwise all allegations in Paragraphs 103 through 153 are denied.

154. To the extent Paragraph 154 calls for a legal conclusion, no response is required, otherwise all allegations in Paragraph 154 are denied.

155. With respect to the “Proposed Civil Penalty” set forth in Counts 1 through 102 under Paragraph 155, which counts total an alleged Proposed Civil Penalty of \$144,840, such allegations in paragraph 155 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 March 25, 2006.

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)*.

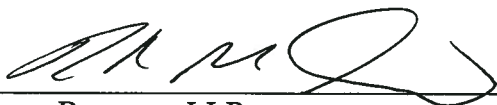
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Request for Hearing

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
Great Falls, Virginia 22066
Telephone Number: (703) 759-1055
Facsimile Number: (703) 759-1051

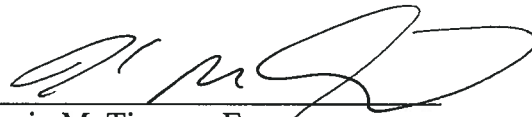
CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2011, 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:

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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