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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE ADMINISTRATOR**

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

**COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

The United States Environmental Protection Agency, Region 5 ("Complainant"), in accordance with the March 11, 2011 Prehearing Order ("Prehearing Order") issued by the Presiding Officer, Chief Judge Biro, respectfully submits the following Complainant's Initial Prehearing Exchange pursuant to Section 22.19 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, codified at 40 Code of Federal Regulations ("C.F.R.") § 22.19.

**1.(A) EXPECTED WITNESSES**

This section includes a list of the names of expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness as required by Paragraph 1.(A) of the of the Presiding Officer's Prehearing Order.

**Fact Witness**

Complainant may call the following individuals to testify as fact witnesses in the hearing in this matter:

1. Jumaane Kamau Akinyele. Mr. Akinyele will testify that he and his wife Jasmini Akinyele contracted with Respondent in May 2005 to replace six windows in their home in Detroit, Michigan. This work was completed in June 2005. The Akinyeles subsequently added two more windows to their original contract (CX 61). By letter dated July 11, 2005, Mr. Akinyele wrote to Brian Elias at Hanson's advising Hanson's that his house had been built in the 1920s, and requesting information about protocols for lead safe work practices for the additional two windows to be installed (CX 63). On July 26, 2005, Brian Elias wrote back to Mr. Akinyele enclosing information, including, among other things, the EPA-approved pamphlet, but highlighted those portions of the pamphlet and other information that Mr. Elias stated exempted window replacement from the definition of renovation (CX 64).

On July 14, 2005, Mr. Akinyele executed an affidavit that pre-dated his response from Mr. Elias (CX 59). In his affidavit, Mr. Akinyele stated that Hanson's did not provide the EPA pamphlet entitled "Protect Your Family From Lead In Your Home," and did not make any warnings or take any precautions to address dust generated during the window replacement project.

Mr. Akinyele will testify that his pregnant wife, his daughter and he were present while Hanson's performed renovation work in his home. Mr. Akinyele will testify that his home had wood windows. In performing the renovation work, Hanson's removed the windows and sills. Mr. Akinyele will testify that in removing the existing windows, Hanson's generated dust, and he recalls seeing and breathing in the dust.

At the time of the original renovation project, the Akinyele's daughter was one year old, and Mrs. Akinyele was approximately eight months pregnant. Approximately one month following the original window replacement work, in two separate blood tests, the Akinyele's one year old daughter was found to have an elevated blood lead level of 28 micrograms per deciliter and 24.7 micrograms per deciliter, respectively (CX 60).

2. Scott Cooper: Scott Cooper is an Environmental Protection Specialist with the Pesticides and Toxics Compliance Section, Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5. His duties include serving as an inspector and enforcement officer in the investigation of lead disclosure violations under the Toxic Substances Control Act ("TSCA").

Mr. Cooper will testify about the December 23, 2005 TSCA Subpoena issued to Hansons Window and Construction seeking documents and other information from January 1, 2002 to the present (at that time, December 2005), correspondence regarding the 2005 Subpoena, and Respondent's response (CX 1, CX 23 and CX 24). Mr. Cooper will also testify about EPA's January 12, 2010 TSCA Subpoena to Respondent, correspondence regarding the 2010 Subpoena, and Respondent's response (CX 25 through CX 33, CX 35 through CX 36).

Mr. Cooper will testify as to his review of the evidence compiled as a result of EPA's regulatory oversight of Respondent's renovation business, and the factual basis for his determination that Respondent is in violation of TSCA and the regulations promulgated thereunder (CX 2, CX 37 and CX 39).

In addition, Mr. Cooper will testify about EPA's educational outreach efforts, including interpretive guidance issued by EPA (CX 8, CX 9, CX 10, CX 19 through CX 22, CX 52 and CX 77).

He will also testify as to how the penalty proposed in the referenced Amended Complaint was calculated applying the statutory penalty factors set forth within Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), as explained by EPA's 10<sup>th</sup> Interim Final Draft of the Consolidated Enforcement Response and Penalty Policy for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated April 11, 2010

("Enforcement Response and Penalty Policy," or "ERPP") (CX 3), as set forth in greater detail in his declaration attached as CX 7. He will offer his assessment of the appropriateness of the penalty proposed in the Amended Complaint, considering the nature, circumstances, extent, and gravity of the violations, and with respect to the Respondent, ability to pay, effect of ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

If necessary, Mr. Cooper will testify regarding the delegations of authority pertaining to the Amended Complaint (CX 11 and CX 12).

Mr. Cooper will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

3. Christine Anderson. Christine Anderson is an Environmental Protection Specialist with the Pesticides and Toxics Compliance Section, Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5, and is the co-Enforcement Officer in this matter. Ms. Anderson may testify to some of the matters identified in the summary of Mr. Cooper's testimony, above.

If necessary, Ms. Anderson will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

4. William Gomora. William Gomora is employed by Senior Service of America, Inc., 8403 Colesville Road, Suite 1200, Silver Springs, Maryland 20910, as a Senior Environmental Employee. Mr. Gomora works as a multi-program inspector for EPA in the Pesticides and Toxics Compliance Section, Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5. Mr. Gomorra will testify regarding how Complainant established that the properties identified in the Amended Complaint were constructed prior to 1978 by reviewing publicly available database information (CX 44, CX 45 and CX 46).

If necessary, Mr. Gomora will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

5. Wesley F. Priem. Wesley F. Priem is the Section Manager, Healthy Homes Section, Michigan Department of Community Health ("MDCH"), Capitol View Building, 201 Townsend, 4<sup>th</sup> Floor, P.O. Box 30195, Lansing, Michigan 48909. Mr. Priem will testify about the incidence of lead-poisoning in particular locations in the United States that have an older housing stock, and his testimony will focus on number of children in the State of Michigan who continue to be exposed to lead-based paint hazards in their apartments and homes. Mr. Priem will testify about lead poisoning of children in the State of Michigan, and how federal rules, including the PRE Rule, are important components in the effort to reduce, and eventually eliminate, childhood lead poisoning related to lead-based paint in housing (CX 51). Mr. Priem will testify about how MDCH works with EPA to address problems in the State of Michigan regarding work done by renovators. Mr. Priem will provide testimony about the State pre-renovation rule, which mirrors

the federal PRE Rule, and how the renovation work performed by Respondent has always been subject to the State PRE Rule.

If necessary, Mr. Priem will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

6. Daniel Lince. Daniel Lince is a Compliance Officer with the MDCH Healthy Homes Section.

Mr. Lince will testify about his familiarity with renovation work performed by Respondent in the State of Michigan, which includes, among other things, window and siding replacement. Mr. Lince will testify about the State actions taken against Respondent (CX 55 through CX 76). Mr. Lince will testify about how work performed by Respondent may require a local government permit such as a building permit. Mr. Lince will testify that, for example, the renovation work performed by Respondent at the Akinyele residence in 2005 appears to have been so extensive that it would require a building permit. Mr. Lince will testify that he is not aware if Respondent obtained a local government permit for the renovation work performed by Respondent at the Akinyele residence.

Mr. Lince will testify about 8 photos taken of Respondent's window replacement work at the Akinyele home (CX 69 through CX 76). The first photo of Window No. 1, shows one large sliding window installed to replace two smaller windows in the kitchen. The center divider that existed between the two older windows was replaced, or in other words, it appears that Respondent replaced a structural member as part of this renovation work. In addition, new trim, still unfinished, was added around the perimeter. The second photo of Window # 1 shows a close-up of the center and top of Window No. 1, where the center divider was cut flush for installation of the new slider. The bulge indicates that the wood travels all the way to the header. This, along with the construction style and lack of visible lentils (a support often seen over exterior windows in masonry construction) on the outside (Photo 3 and Photo 4 for exterior shots), indicates this divider was a mullion. The next two photos (Photo 5 and Photo 6) are of Window No. 2, a new sliding window in a bedroom. Information indicates that this new window replaced two smaller double-hung windows. The last two photos are of Window No. 3, a new sliding window in the home office/dining room. Information indicates that this large slider replaced two double hung windows, again, necessitating disturbing the center divider between the two old windows, as well as requiring reinstallation of some trim.

In addition to the complaint made by the Akinyeles, Mr. Lince will testify about other complaints the State has received regarding Respondent. For example, Mr. Lince will testify that Ms. Claudia Corbin contracted with Hanson's in August 2004 to replace eleven windows and two doors in her home located in Detroit, Michigan. In June 2005, Ms. Corbin executed an affidavit stating that Hansons failed to provide the EPA pamphlet entitled "Protect Your Family From Lead In Your Home" to her, and did not make any warnings or take any precautions to address dust generated during the window replacement project. At the time of this renovation project, Ms. Corbin's nine month old granddaughter resided with Ms. Corbin. Approximately

three months following the renovation work, Ms. Corbin's granddaughter was found to have an elevated blood lead level. When the City of Detroit Health Department visited Ms. Corbin's home, the inspector identified the source of her lead exposure as dust created when the windows were replaced.

In addition, Mr. Lince and/or Mr. Priem will testify about the State of Michigan's education and outreach mailing regarding TSCA Section 406(b) requirements. Around January 2005, the State mailed information to about 65,000 entities holding a builder's license in the State of Michigan (CX 77). At that time, the State sent a cover letter explaining the pre-renovation requirements, including a toll-free number for any questions, along with EPA's pamphlet, "Lead-Based Paint Pre-Renovation Education Rule: A Handbook for Contractors, Property Managers, and Maintenance Personnel." The State listing of recipients at this time includes "Hanson's Window and Siding." Further, many of Respondent's subcontractors were likely to be recipients of the State's mass education and outreach mailing.

Mr. Lince will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

7. James Copeland. James Copeland is a Compliance Officer with the MDCH Healthy Homes Section. Mr. Copeland's duties include pre-compliance enforcement. Mr. Copeland worked for ten years as a builder in the private sector before beginning his employment at MDCH approximately two years ago.

Mr. Copeland holds a State of Michigan Residential Builder's and Maintenance and Alterations license. Mr. Copeland will testify about his experience working in the industry, particularly industry compliance with the PRE Rule in the State of Michigan.

If necessary, Mr. Copeland will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

8. Steve Smith. Steve Smith is a Compliance Officer with the MDCH Healthy Homes Section. Mr. Smith holds a State of Michigan Residential Builder's and Maintenance and Alterations license. Mr. Smith oversaw the City of Grand Rapids' rehabilitation department. His current duties include oversight of State risk assessors and lead inspectors.

Mr. Smith will testify about industry compliance with the PRE Rule in the State of Michigan.

Note that it is not Complainant's intent to have any of the State Compliance Officers offer duplicative testimony.

If necessary, Mr. Smith will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

## Expert Witnesses

Complainant may call the following individuals to testify as expert witnesses or mixed fact and expert witnesses.

1. Dr. Warren Friedman, Ph.D., CIH. Dr. Friedman is Senior Advisor to the Director of the Department of Housing and Urban Development (“HUD”) Office of Healthy Homes and Lead Hazard Control. Dr. Friedman’s Curriculum Vitae is attached as CX 47. Dr. Friedman co-authored, “The Prevalence of Lead-Based Paint Hazards in U.S. Housing,” which is included as CX 49.

In his current position, Dr. Friedman’s duties include working with the Director of HUD’s Office of Healthy Homes and Lead Hazard Control regarding, among other things, the lead-based paint hazard control and healthy homes grant programs, and related research, public education, enforcement and training activities. Dr. Friedman is familiar with EPA’s and HUD’s regulations and requirements regarding lead-based paint. Dr. Friedman will testify about the 1995 HUD Guidelines which, among other things, are referenced as the basis for the minor maintenance and repair *de minimus* exemption in the PRE Rule. A copy of the 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, HUD-0006700, Department of Housing and Urban Development, June 1995 (including a copy of the 1995 version of Chapter 7), is included at CX 48, and is also currently available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/lbp/hudguidelines](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines)

Among other things, Dr. Friedman will testify that HUD has considered window renovation as an activity that has the potential to generate lead-based paint dust hazards. Dr. Friedman will testify that “pop-out” window replacement work disturbs the paint film. Even before the promulgation of the 1995 HUD Guidelines, HUD considered this type of work to have a high risk of generating lead dust, thus requiring greater protective measures.

Dr. Friedman may also testify to additional opinions as necessary to respond to assertions or arguments raised by Respondents.

If necessary, Dr. Friedman will provide testimony sufficient to authenticate certain exhibits included in Complainant’s prehearing exchange.

2. Gail B. Coad. Ms. Coad is a Principal of Industrial Economics, Inc., a consulting firm located at 2067 Massachusetts Avenue, Cambridge, Massachusetts 02140. Ms. Coad may be called to testify as an expert witness in the areas of the forensic analysis of financial information and the analysis of Respondent’s ability to pay and the effect of a penalty on Respondent’s ability to continue in business. Ms. Coad has been qualified as an expert in these areas in both administrative hearings before the Office of Administrative Law Judges, and in trials before federal district courts, as well as in state court proceedings. Ms. Coad may testify about her review of the limited current financial information publicly available to Complainant relating to attempts to assess the ability to pay of the Respondent and the effect of the proposed penalty on

Respondent's ability to continue to do business.

If inability to pay the proposed penalty or the effect of the proposed penalty on Respondent's ability to continue in business is presented by Respondent in its prehearing exchange, Ms. Coad may testify about her assessment of any financial information submitted by Respondent, including the sufficiency or reliability of any financial information, and she may identify other categories of information or areas of inquiry that are relevant to an assessment of Respondent's ability to pay. Ms. Coad may also provide her expert opinions and conclusions as to Respondent's financial status and ability to pay the penalty proposed in the Amended Complaint.

More specifically, if called to testify as an expert witness at the hearing in this matter, Ms. Coad may testify about the work of Industrial Economics, Inc., as an economics and environmental consulting firm which provides consulting work on various subjects, including (but not limited to) evaluating economic damages and losses sustained in breach of contract cases; providing expert witness services in environmental enforcement litigation; performing regulatory impact analyses for a variety of governmental agencies; performing natural resource damage assessments for trustees and international bodies; assessing lost profits in economic damage cases; performing financial analyses in enforcement cases to determine economic benefit from noncompliance; and assessing the ability to pay of corporations, partnerships and individuals in enforcement cases. She may also testify as to her experience in evaluating the financial situation and ability to pay of various types of entities for cases litigated before administrative tribunals and federal district courts.

Ms. Coad has performed analyses of ability to pay in more than 150 cases during her tenure with Industrial Economics, Inc. She has assessed the ability to pay of many different types of entities, ranging in size from large multinational corporations to small businesses to individuals, and involving all types of business activities (e.g., real estate, agriculture, manufacturing, utilities, chemical, mining, co-generation plants, municipalities, and not-for-profit organizations). Ms. Coad has testified regarding ability to pay in cases before federal district courts, state courts, and in cases before the EPA's Office of Administrative Law Judges. These cases are identified in her Curriculum Vitae, which is at CX 53.

Ms. Coad may also testify about her efforts to analyze the financial status and ability to pay of the Respondent in this case, and the effect of payment of a penalty on the ability of Respondent to continue in business. She may testify about the standard methodology used by professionals in this field to evaluate the financial status and ability to pay of individuals, corporations or partnerships. Ms. Coad may testify about the different types of financial documentation, and the extent of such financial data, that are necessary to conduct any reasonably accurate assessment of a respondent's financial condition and ability to pay, including the reasons why completed financial statements are needed to begin any meaningful evaluation of a corporation's ability to pay. Ms. Coad may also testify about the relevance of the financial evidence requested by Complainant on September 20, 2010 (CX 42) and again on December 30, 2010 (CX 43). She may testify about the need in any ability to pay analysis to identify potential

sources of funds available to the subject of the analysis, and about the need to fully and accurately identify that party's expenses and assess whether or not all such expenses are reasonable. Ms. Coad may testify that analyzing ability to pay also necessarily involves an analysis of the net worth of the party, which entails an accurate and complete identification of all assets (including real estate and personal property) and liabilities. She may testify about her assessment of the sufficiency or reliability of financial information which may be submitted by Respondent in its prehearing exchange, and she may identify other categories of information or areas of inquiry that are relevant to an assessment of Respondent's ability to pay.

Ms. Coad's testimony may be expanded to cover far more subjects, depending on whether Respondent provides the required financial data to support a claim that it is unable to pay the penalty proposed in the Complaint, depending on the nature and extent of any financial information provided by Respondent in its prehearing exchange, and depending on the results of any further investigation of Respondent's financial situation.

Ms. Coad may also testify to additional facts or opinions as necessary to respond to assertions or arguments raised by Respondent.

If necessary, Ms. Coad will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

3. Maureen O'Neill. Ms. O'Neill is a Civil Investigator in EPA's Office of Regional Counsel, EPA, Region 5. Ms. O'Neill performs investigative work in support of the civil prosecution of environmental violations. Ms. O'Neill's duties include interviewing potential witnesses and other individuals who may have pertinent information; locating people of interest; performing public records searches to obtain evidence relating to property ownership, asset transfers, and other financial information; and drafting reports to document the findings of her investigations. Ms. O'Neill's Curriculum Vitae is included as CX 54.

If Respondent raises a claim pertaining to its ability to pay the proposed penalty, or regarding the effect of the proposed penalty on Respondent's ability to continue in business, Ms. O'Neill may be called to testify regarding her investigation into Respondent and Respondent's principals. Her testimony may include, but may not be limited to testimony about the following investigative activities: internet investigations into ownership of assets associated with Respondent or Respondent's principals; investigation of liabilities relating to Respondent or Respondent's principals; investigation of Respondent's associations with other corporate, partnership or other business entities; and investigations of the background of potential witnesses. Ms. O'Neill will prepare an investigative report that Complainant will submit to the Court and Respondent. If necessary, Ms. O'Neill will provide testimony sufficient to authenticate the documents and other exhibits contained in her report.

Ms. O'Neill may also testify to additional opinions as necessary to respond to assertions or arguments raised by Respondent.



If necessary, Ms. O'Neill will provide testimony sufficient to authenticate certain exhibits included in Complainant's prehearing exchange.

Complainant reserves the right not to call any of the above-listed witnesses at hearing. In addition, Complainant reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or for any other legitimate purpose.

**1.(B) DOCUMENTS AND EXHIBITS**

Copies of documents and exhibits which Complainant intends to introduce into evidence at the hearing are attached hereto as Complainant's Exhibits, and are numbered sequentially. Included with these documents are those that the Court ordered to be exchanged in Paragraph 1.(B) of the Prehearing Order, as follows.

- CX 1: EPA's December 23, 2005 TSCA Subpoena to Hansons Window and Construction, Inc.
- CX 2: February 8, 2006 response to 2005 Subpoena including an Excel spreadsheet on disk of 4,383 jobs performed by Hansons in 2005 within the State of Michigan, a .pdf of a standard contract used at the time, and a .pdf of the Pre-Renovation Lead Information Pamphlet, along with written acknowledgement of receipt of the Pamphlet
- CX 3: 10<sup>th</sup> Interim Final Draft of the Consolidated Enforcement Response and Penalty Policy for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated April 11, 2010 (Enforcement Response and Penalty Policy, or ERPP)
- CX 4: August 19, 2010 Memorandum Transmitting Interim Final ERPP
- CX 5: August 2010 Interim Final ERPP
- CX 6: Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 Fed. Reg. 59770 (1980) (TSCA Civil Penalty Guidelines)
- CX 7: Scott Cooper's Explanation of Proposed Penalty dated April 20, 2011
- CX 8: "The Lead-Based Paint Pre-Renovation Education Rule" interpretive guidance Part I issued by EPA on May 28, 1999, revised June 25, 1999

- CX 9: "The Lead-Based Paint Pre-Renovation Education Rule" interpretive guidance Part II issued by EPA on October 15, 1999
- CX 10: "The Lead-Based Paint Pre-Renovation Education Rule" interpretive guidance Part III issued by EPA on January 2, 2002
- CX 11: EPA National Delegation 12-2-A, dated May 11, 1994
- CX 12: EPA Region 5 Delegation 12-2-A/2-B, TSCA Administrative Enforcement, dated October 22, 2007
- CX 13: "Lead; Requirements for Hazard Education Before Renovation of Target Housing," 59 Fed. Reg. 11108-11118 (March 9, 1994)
- CX 14: "Lead Hazard Information Pamphlet; Notice of Availability," 59 Fed. Reg. 11119-11120 (March 9, 1994)
- CX 15: Toxic Substances Control Act § 406(b) Final Rulemaking: Response to Comment Document, April 3, 1998
- CX 16: "Lead; Requirements for Hazard Education Before Renovation of Target Housing," 63 Fed. Reg. 29908-29921 (June 1, 1998)
- CX 17: "Lead; Renovation, Repair and Painting Program," 71 Fed. Reg. 1558-1636 (January 10, 2006)
- CX 18: "Regulatory Impact Analysis of Lead-Based Paint Hazard Disclosure Regulation for Residential Renovations," October 1996
- CX 19: "Reducing Lead Hazards When Remodeling Your Home," September 1997
- CX 20: "Protect Your Family From Lead In Your Home" pamphlet
- CX 21: The Lead-Based Paint Pre-Renovation Education Rule Handbook, September 1999
- CX 22: Pre-Renovation Lead Information Rule: Fact Sheet, May 1998
- CX 23: January 13, 2006 letter from Complainant to Respondent regarding 2005 TSCA Subpoena
- CX 24: January 19, 2006 letter from Complainant to Respondent regarding 2005 TSCA Subpoena

- CX 25: January 12, 2010 TSCA Subpoena to Respondent
- CX 26: February 3, 2010 letter from Respondent to Complainant regarding 2010 TSCA Subpoena
- CX 27: March 19, 2010 letter from Complainant to Respondent regarding 2010 TSCA Subpoena
- CX 28: April 1, 2010 letter from Respondent to Complainant regarding 2010 TSCA Subpoena
- CX 29: April 2, 2010 letter from Complainant to Respondent regarding 2010 TSCA Subpoena
- CX 30: April 12, 2010 letter from Respondent to Complainant regarding 2010 TSCA Subpoena
- CX 31: April 16, 2010 letter from Complainant to Respondent regarding 2010 TSCA Subpoena
- CX 32: April 20, 2010 letter from Respondent to Complainant regarding 2010 TSCA Subpoena
- CX 33: May 7, 2010 letter from Complainant to Respondent regarding 2010 TSCA Subpoena
- CX 34: June 4, 2010 prefiling letter from Complainant to Respondent
- CX 35: June 7, 2010 letter from Respondent to Complainant, including enclosures
- CX 36: June 8, 2010 letter from Complainant to Respondent, including enclosures
- CX 37: June 8, 2010 letter from Respondent to Complainant, excluding enclosures (claimed CBI)
- CX 38: June 21, 2010 letter from Complainant to Respondent regarding 2010 TSCA Subpoena
- CX 39: September 21, 2010 letter and affidavit from Respondent to Complainant responding to EPA's 2010 TSCA Subpoena
- CX 40: April 7, 2006 Dun & Bradstreet report regarding Respondent
- CX 41: June 3, 2010 Dun & Bradstreet report regarding Respondent

- CX 42: Complainant's September 20, 2010 letter to Respondent requesting financial Information
- CX 43: Complainant's December 30, 2010 letter to Respondent requesting financial information
- CX 44: Ingham County (Lansing, MI) Database; Residential Property Summary, including year of construction
- CX 45: City of Charlotte, Michigan Database; Residential Property Summary, including year of construction
- CX 46: City of Warren, Michigan Database; Residential Property Summary, including year of construction
- CX 47: Curriculum Vitae of Dr. Warren Friedman
- CX 48: 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, HUD-0006700, Department of Housing and Urban Development (HUD), June 1995 (including 1997 version of Chapter 7) on disk:  
 Forward  
 Chapter 1 Introduction  
 Chapter 2 Where to Go for Help - Qualifications and Roles  
 Chapter 3 Before You Begin - Planning To Control Lead Hazards  
 Chapter 4 Lead-Based Paint and Housing Renovation  
 Chapter 5 Lead-Based Paint Risk Assessment  
 Chapter 6 Ongoing Monitoring  
 Chapter 7 Lead-Based Paint Inspections  
 Chapter 8 Resident Protection and Worksite Preparation  
 Chapter 9 Worker Protection  
 Chapter 10 Hazardous and Non-hazardous Waste  
 Chapter 11 Interim Controls  
 Chapter 12 Abatement  
 Chapter 13 Encapsulation  
 Chapter 14 Cleaning  
 Chapter 15 Clearance  
 Chapter 16 Investigation and Treatment of Dwellings Housing Children with Elevated Blood Lead Levels  
 Chapter 17 Routine Building Maintenance and Lead-Based Paint  
 Chapter 18 Lead Hazard Control and Historic Preservation  
 References

Glossary  
Appendices  
Addendum 2  
Addendum 3  
Errata Sheet      October 1, 1996

- CX 49:      “The Prevalence of Lead-Based Paint Hazards in U.S. Housing,” David E. Jacobs, Robert P. Clickner, Joey Y. Zhou, Susan M. Viet, David A. Marker, John W. Rogers, Darryl C. Zeldin, Pamela Broene, and Warren Friedman, Environ. Health Perspect., 2002 October; 110(10): A599–A606
- CX 50:      “Monetary benefits of preventing childhood lead poisoning with lead-safe window replacement,” Rick Nevin, David E. Jacobs, Michael Berg, Jonathan Cohen, Environ Res., 2008 Mar;106(3):410-9. Epub 2007 Oct 24
- CX 51:      Michigan Lead Safe Partnership (MLSP), Lead Poisoning: Childhood Lead Poisoning in Michigan Fact Sheet compiled by the MLSP, June 2003
- CX 52:      “Testimony Submitted to the Small Business Administration on the Section 406(b) Lead-Based Paint Pre-Renovation Education Rule, June 13, 2000
- CX 53:      Curriculum Vitae of Gail Coad
- CX 54:      Curriculum Vitae of Maureen O’Neill
- CX 55:      June 29, 2005 Affidavit signed by Claudia Corbin
- CX 56:      August 28, 2004 installment contract between Respondent and Ms. Corbin, including finance agreement
- CX 57:      2005 letter from Detroit City inspector to Respondent
- CX 58:      Notes from State file regarding Respondent and Ms. Corbin
- CX 59:      July 14, 2005 Affidavit signed by Jumaane K. Akinyele
- CX 60:      Blood lead level test results for Akinyele’s 17 month old baby
- CX 61:      May 14, 2005 installment contract between Respondent and Jumaane Kamau Akinyele and Jasmini Akinyele, including finance agreement
- CX 62:      Notes from State file regarding Respondent and Akinyeles

- CX 63: July 11, 2005 letter from Kamau Akinyele to Respondent
- CX 64: July 26, 2005 response from Brian Elias of Hanson's to Mr. Akinyele, including 3 enclosures
- CX 65: January 11, 2006 Citation from MDCH to Respondent
- CX 66: September 5, 2006 letter from Respondent to MDCH regarding the Akinyeles
- CX 67: September 11, 2006 letter from MDCH to Respondent regarding the Akinyeles
- CX 68: September 15, 2006 letter from Respondent to MDCH
- CX 69: Photo of Window No. 1 replacement at Akinyeles, showing one large sliding window installed in place of 2 smaller windows in the kitchen
- CX 70: Photo 2 of Window No. 1 shows a close-up of the center and top of Window No. 1, where the center divider was cut flush for installation of the new slider
- CX 71: Photo 3 of Window No. 1, exterior view
- CX 72: Photo 4 of Window No. 1, exterior view
- CX 73: Photo 5, replacement of Window No. 2, a new sliding window in a bedroom that replaced two smaller double-hung windows
- CX 74: Photo 6, another view of Window No. 2
- CX 75: Photo 7, replacement of Window No. 3, a new sliding window in the home office/dining room that replaced two double hung windows
- CX 76: Photo 8, another view of Window No. 3
- CX 77: January 2005 Education and Outreach Mailing to State contractors, including Respondent
- CX 78: October 4, 2006 submission of tax returns claimed as CBI (redacted)

Complainant reserves the right to add additional exhibits to rebut Respondent's testimony.

**1.(C) LOCATION OF HEARING**

As required by Paragraph 1.(C) of the Prehearing Order, and 40 C.F.R. §§ 22.21(d) and

22.19(d), Complainant requests that the hearing in this matter be held at a suitable location in or near Washington, DC, or in Lansing, Michigan. Most of Complainant's Agency witnesses will have to travel from Chicago, Illinois. However, Complainant will call a senior HUD official, and would like to minimize the time away from his duties by having the hearing in Washington, DC. In addition, this location will likely be more convenient for Respondent's counsel and the Court. In the alternative, Complainant is calling State witnesses who work in Lansing, Michigan, and a Lansing, Michigan location would be less burdensome for the State witnesses and for Respondent.

Complainant anticipates needing approximately 4 days to present its direct case.

Complainant does not expect to need translation services for witness testimony.

## **2.(A) ADDITIONAL DOCUMENTS AND STATEMENTS**

As required by Paragraph 2.(A) of the Prehearing Order, Complainant is providing copies of any documents in support of the allegations in Paragraphs 28, 29, 37, and in Paragraphs 48 through 318 (Counts 1 through 271) of the Amended Complaint, as follows:

Paragraph 28: Complainant is providing documents supporting allegations in Paragraph 28 at CX 55, CX 58, CX 59 and CX 62.

Paragraph 29: Complainant is providing documents supporting allegations in Paragraph 29 at CX 55, CX 58, CX 59, CX 60, and CX 62 through CX 68.

Paragraph 37: Complainant is providing documents supporting allegations in Paragraph 37 at CX 2.

Paragraphs 48-318: Complainant is providing documents supporting allegations in Paragraphs 48-318 at CX 2, CX 39, CX 44, CX 45, CX 46, CX 55 through CX 59, and CX 61 through CX 78.

## **2.(B) RESPONSE TO RESPONDENT'S ASSERTION IN ANSWER TO PARAGRAPH 44 OF THE COMPLAINT**

As required by Paragraph 2.(B) of the Prehearing Order, Complainant is responding to Respondent's assertion in its Answer to Paragraph 44 of the Complaint, that Respondent did respond to EPA's June 4, 2010 prefiling letter.

In EPA's June 4, 2010 prefiling letter (CX 34), EPA advised Respondent of its intent to file an administrative complaint alleging 542 violations of the Residential Property Renovation Rule related to the addresses listed in Appendix A to the letter (and as ultimately set forth in Paragraph 37 of the Amended Complaint). In the prefiling letter, EPA also stated that EPA intended to seek a proposed penalty of \$784,380. EPA advised Respondent to provide certain

financial information it Respondent believed it was not able to pay the proposed penalty. EPA requested that Respondent provide EPA with any information EPA might consider to show that the complaint was not justified within 3 days of Respondent's receipt of the letter.

On June 7, 2010, Respondent's counsel submitted a letter to EPA (CX 35) regarding EPA's May 7, 2010 TSCA Subpoena, and requested an extension of time to respond to EPA's June 4, 2010 letter. On June 8, 2010, Respondent's counsel submitted some information responsive to Complainant's May 2010 Subpoena (CX 37). By letter dated June 8, 2010 (CX 36), Complainant's counsel, among other things, explained that the TSCA Subpoena and the administrative complaint were separate matters, and advised Respondent to sign and return an enclosed tolling agreement by noon Central on June 9, 2010, if Respondent wished to extend the time to respond to EPA's June 4, 2010 letter regarding an administrative complaint. Respondent did not respond to Complainant's June 8, 2010 letter. Thus, Complainant filed the original Complaint in this matter on the afternoon of June 9, 2010.

In its prefiling letter, Complainant had requested that Respondent provide information to show why the issuance of the Complaint was not justified and/or to provide information pertaining to the proposed penalty. In the original Complaint at paragraph 44, Complainant stated that Respondent did not reply to Respondent's June 4, 2010 letter. However, the more accurate statement would be that Respondent did not provide any information pertaining to the alleged violations or the proposed penalty in response to EPA's June 4, 2010 prefiling letter.

## **2.(C) ADDITIONAL DOCUMENTS AND STATEMENTS**

As required by Paragraph 2.(C) of the Prehearing Order, Complainant is providing copies of any documents in support of the allegations in Paragraphs 322 through 592 (Counts 272 through 542) of the Amended Complaint, at CX 2, CX 39, CX 44, CX 45, CX 46, CX 55, CX 56 through CX 59, and CX 61 through CX 78.

## **2.(D) PROPOSED PENALTY**

As required by Paragraph 2.(D) of the Prehearing Order, Scott Cooper, who made the penalty determinations for Complainant, has prepared a detailed description of his penalty calculation, including a discussion of each of the penalty assessment factors in Section 16 of TSCA, 15 U.S.C. § 2615. This written description is set forth in Mr. Cooper's Explanation of Proposed Penalty which appears at CX 7.

## **2.(E) RESPONSE POLICY REFERRED TO IN THE AMENDED COMPLAINT**

As set forth in greater detail in Mr. Cooper's Explanation of Proposed Penalty (CX 7), Complainant relied on the 10<sup>th</sup> Interim Final Draft of the Consolidated Enforcement Response and Penalty Policy for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated April 11, 2010 (Enforcement Response and Penalty Policy, or ERPP) (CX 4), in effect at the time that original Complaint was being prepared in its



calculation of the proposed penalty in this matter. Since filing the original Complaint in this matter, EPA has issued an August 2010 Interim Final ERPP (CX 5). However, the penalty amounts and analysis which formed the basis for the proposed penalty in the original and Amended Complaints in this matter are not affected by any revisions to the 10<sup>th</sup> Interim Final ERPP dated April 2010. The Enforcement Response and Penalty Policy is based on the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which are the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, ability to pay, effect of ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. The Enforcement Response and Penalty Policy was developed under the general framework established by the Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 Fed. Reg. 59770 (1980) (TSCA Civil Penalty Guidelines) (CX 6).

## **2.(F) APPLICATION OF THE PAPERWORK REDUCTION ACT**

As stated in Paragraph 2.(F) of the Prehearing Order, the Presiding Officer directed Complainant to provide its position regarding the applicability of the Paperwork Reduction Act, 44 U.S.C. §§ 3501 *et seq.* (“PRA”), to this proceeding, including whether there is a current Office of Management and Budget (“OMB”) control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

The PRA does apply to the information collection requirements of the PRE at 40 C.F.R. Part 745, Subpart E. As stated in the preamble to the final PRE rule at 63 Fed. Reg. 29915 (June 1, 1998), renovators are required to retain and, if requested, make available to EPA or its authorized delegates (i.e., States and Tribes with EPA-approved programs) all records necessary to demonstrate compliance with the requirements of this rule for 3 years following completion of the renovation activities on target housing. These records include any reports certifying that lead-based paint is not present in the housing; the signed, dated acknowledgments of receipt for delivery of the pamphlet; the signed, dated certifications of the inability to obtain an acknowledgment of receipt; the certificate of mailing for delivery of the pamphlet; and the signed, dated acknowledgments and records of notification activities for renovations in common areas.

EPA obtained OMB approval of the information collection requirements. The OMB control number assigned to the information collection requirements in the rule is 2070-0158. On March 24, 2005 (70 Fed. Reg. 15082), EPA issued a notice in the Federal Register, EPA ICR No. 1669.04, Lead-Based Paint Pre-Renovation Information Dissemination, to announce that on February 14, 2005, OMB had approved the information collection requirements in TSCA Section 406(b), 40 C.F.R. Part 745, Subpart E, expiring February 29, 2008. On February 21, 2008, issued a Federal Register notice stating that EPA had forwarded ICR No. 1669.05, Lead-Based Paint Pre-Renovation Information Dissemination, to OMB for review and approval. 73 Fed. Reg. 9564. Under OMB regulations, an agency may continue to conduct or sponsor the collection of information while its submission is pending at OMB. EPA ICR No. 1669.05 was approved on August 14, 2008 with an expiration date of August 31, 2011.

The transactions alleged in the Amended Complaint occurred between May 2005 and December 2005. Complainant states that there was no lapse in this OMB control number during the period of noncompliance cited in the Amended Complaint. Thus, Complainant has fully complied with the PRA with respect to the counts at issue in this proceeding.

### JUDICIAL NOTICE

Complainant hereby requests the Presiding Officer take judicial notice of the following:

1. The Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., including the legislative history;
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, as amended, including 61 Fed. Reg. 9064, March 6, 1996; and
3. Federal Register notices, including those pertaining to OMB information collection requirements.

### RESERVATION OF RIGHTS

Complainant respectfully reserves the right to call all witnesses called by the Respondent, to recall any of their witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondent and the Presiding Officer.

Respectfully submitted,  
U.S. Environmental Protection Agency



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

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CERTIFICATE OF SERVICE

I certify that the foregoing **Complainant's Initial Prehearing Exchange**, dated April 21, 2011, was filed and sent this day in the following manner to the addressees listed below:

Original and One Copy Hand-Delivered to:

LaDawn Whitehead (E-19J)  
Regional Hearing Clerk  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

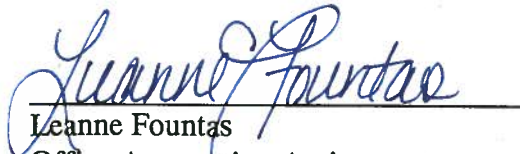
Copy by Express Mail to:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, DC 20005

Copy by Regular Mail to:

D.S. Berenson, Esquire  
Kevin M. Tierney, Esquire  
Johanson Berenson LLP  
1146 Walker Road, Suite C  
Great Falls, VA 22066

Dated: April 21, 2011

  
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Leanne Fountas  
Office Automation Assistant  
U.S. EPA, Region 5