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U.S. EPA REGION 5  
ENVIRONMENTAL PROTECTION AGENCY  
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**BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
Hanson's Window and Construction, Inc., ) Docket No. TSCA-05-2010-0013  
  ) Docket No. TSCA-05-2011-0006  
  ) Respondent. )

**COMPLAINANT'S SECOND INITIAL PREHEARING EXCHANGE**

In accordance with the May 5, 2011 Amended Prehearing Order in these matters issued by the Presiding Officer, Chief Judge Biro, the United States Environmental Protection Agency, Region 5 ("Complainant"), respectfully submits the following Complainant's Second 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**

In the Amended Prehearing Order, the Court recognized that Complainant already filed its Initial Prehearing Exchange in Docket No. TSCA-05-2010-0013, and therefore need not resubmit information or documents already served, but shall produce additional responsive information and or documentation relevant to allegations in Docket No. TSCA-05-2011-0006 only. Accordingly, this section includes a list of the names of expert and other witnesses intended to be called at hearing not already included in Complainant's Initial Prehearing Exchange, 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 Amended Prehearing Order.

**Fact Witnesses**

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

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.

In addition to the matters identified in Complainant's Initial Prehearing Exchange, Mr. Cooper will testify about Complainant's March 7, 2011 prefiling letter to Respondent (CX 80), and Respondent's responses to EPA's January 12, 2010 TSCA Subpoena to Respondent (CX

81).

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 81).

He will also testify as to how the penalty proposed in the Complaint, Docket No. TSCA-05-2011-0006 (Second 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 Interim Final Consolidated Enforcement Response and Penalty Policy for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated August 2010 (CX 4 and CX 5), as set forth in greater detail in his declaration attached as CX 79. He will offer his assessment of the appropriateness of the penalty proposed in the Second 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.

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. In addition to the matters identified in Complainant's Initial Prehearing Exchange, 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.

#### **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 79: Scott Cooper's Explanation of Proposed Penalty dated May 18, 2011

CX 80: March 7, 2011 prefiling letter from Complainant to Respondent (Enclosure A to the letter has been redacted)

CX 81: Responses to January 12, 2010 Subpoena, including cover letters, affidavits and contracts, claimed as confidential business information (redacted)

Respondent has claimed that the information Respondent submitted to EPA in response to the January 12, 2010 Subpoena includes confidential business information (CBI). Therefore, CX 81, and Enclosure A to CX 80, which is based on the information Respondent claims is CBI, have been redacted. Complainant intends to submit the unredacted CX 81 and Enclosure A to CX 80 using appropriate procedures prior to the hearing regarding this matter.

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 anticipates needing approximately 5 days to present its direct case.

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

As required by Paragraph 2.(A) of the Amended Prehearing Order, Complainant is providing copies of any documents in support of the allegations in Paragraphs 37, and in Paragraphs 49 through 99 (Counts 1 through 51) of the Second Complaint, as follows:

Paragraph 37: Complainant is providing documents supporting allegations in Paragraph 37 at CX 81.

Paragraphs 49-99: Complainant is providing documents supporting allegations in Paragraphs 49-99 at CX 69 through CX 77, and CX 81.

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

As required by Paragraph 2.(B) of the Amended Prehearing Order, Complainant is providing copies of any documents in support of the allegations in Paragraphs 103 through 153 (Counts 52 through 102) of the Second Complaint at CX 69 through 77, and CX 81.

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

As required by Paragraph 2.(C) of the Amended 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 79.

#### **2.(D) RESPONSE POLICY REFERRED TO IN THE SECOND COMPLAINT**

As set forth in greater detail in Mr. Cooper's Explanation of Proposed Penalty (CX 79), Complainant relied on the Interim Final Consolidated Enforcement Response and Penalty Policy

for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated August 2010 (CX 4 and CX 5), in effect at the time that original Complaint was being prepared in its calculation of the proposed penalty in this matter. 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).

Respectfully submitted,  
U.S. Environmental Protection Agency

  
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In the Matter of Hanson's Window and Construction, Inc., Respondent  
Docket Nos. TSCA-05-2010-0013 and TSCA-05-2011-0006

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CERTIFICATE OF SERVICE

I certify that the foregoing **Complainant's Second Initial Prehearing Exchange**, dated May 25, 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: May 25, 2011

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

CX79

## **EXPLANATION OF PROPOSED PENALTY**

**In the Matter of: Hanson's Window and Construction, Inc., Respondent**  
**Docket No. TSCA-05-2011-0006**

### **Findings Pertaining to the Gravity-Based Penalty Calculation of All Counts**

1. Section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615, and 40 C.F.R. Parts 19 and 72 (Adjustment of Civil Monetary Penalties for Inflation Rule) authorize the imposition of a civil penalty of up to \$37,500 for each violation of a requirement of Section 406(b) of TSCA (the Pre-Renovation Education Rule or PRE Rule) and its implementing regulations at 40 C.F.R. Part 745, Subpart E.
2. Beginning in October 2005, the State of Michigan sent Complainant information about a complaint made by Claudia Corbin and a complaint made by Jumaane Akinyele about renovation work performed by Respondent at their homes. (Complainant's Exhibit (CX) 55-76). At the time of the 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. According to Ms. Corbin, 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. At the Akinyele's home time of the renovation project, Mr. and Mrs. Akinyele's daughter was one year old, and Mrs. Akinyele was approximately eight months pregnant. Approximately one month following the original window replacement work by Respondent, in two separate blood tests, the Akinyele's one year old daughter was found to have elevated blood lead levels.
3. On December 23, 2005, Complainant served Respondent with a TSCA Subpoena Duces Tecum (Subpoena) seeking information about Respondent's compliance with the PRE Rule. The Subpoena sought copies of all contracts for target housing in the past five years. CX 1.
4. On January 12, 2010, Complainant served Respondent with a second TSCA Subpoena Duces Tecum (2010 Subpoena) seeking information about Respondent's compliance with the PRE Rule. The Subpoena sought copies of all contracts for target housing and copies of all acknowledgements of receipt of pamphlets by owners and occupants of target housing since January 12, 2005. CX 25.
5. Beginning in June 2010, Respondent provided documents partially responding Complainant's 2010 Subpoena. CX 81.
6. Based on information provided by Respondent in partial response to Complainant's 2010 Subpoena, on various dates from March 31, 2006 through August 29, 2007, Respondent, entered into 51 written work agreements (contracts) with individuals for window

replacement at residential target housing units located at addresses claimed by Respondent to be Confidential Business Information.

7. In reviewing the information provided by Respondent, Mr. Cooper found no evidence of compliance with the PRE Rule for the 51 contracts provided in response to the 2010 Subpoena.
8. Complainant has relied on the Interim Final Consolidated Enforcement Response and Penalty Policy for The Pre-Renovation Education; Renovation, Repair and Painting; and Lead-Based Paint Activities Rules, dated August, 2010 (Enforcement Response and Penalty Policy, or ERPP) (CX 5), in the calculation of the proposed penalty in this matter. 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). ERPP at 8.
9. Pursuant to the Enforcement Response and Penalty Policy, penalties are determined in a multi-step process. First, the number of independently assessable violations is identified. Next, determine the economic benefit of noncompliance. Then determine the gravity-based penalty. Under the TSCA Penalty Guidelines, gravity-based penalties are determined in two stages: determination of a gravity-based penalty in consideration of the nature, circumstances, extent and gravity of each violation, and the application of adjustments to the gravity-based penalty in consideration of the violator's ability to pay and to continue in business, history of violation, degree of culpability, and such other factors as justice may require. ERPP at 8 and 9.
10. Each requirement of the PRE Rule is a separate and distinct requirement from the other PRE requirements. Failure to comply with each PRE requirement is a separate violation of the PRE Rule. ERPP at 10.
11. The requirement to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation, which is a requirement of 40 C.F.R. § 745.85(a)(1), is a separate and distinct requirement from the requirement to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E.

12. The requirement to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, is a requirement of 40 C.F.R. § 745.86(a).
13. After identifying each applicable regulatory requirement, the next step is to determine the number of renovations that took place. The total number of violations depends in part on the number of renovations, or on the number of affected entities to which information was required to be distributed. ERPP at 10.
14. The next component of the total penalty is the estimated amount of economic benefit the respondent realized from non-compliance. Determining economic benefit is not specifically required by TSCA, but is authorized under the “as justice may require” factor of 15 U.S.C. § 2615(a)(2)(B). The Agency’s Policy on Civil Penalties, EPA General Enforcement Policy #GM-21, dated February 16, 1984, mandates the capture of any significant economic benefit that accrues to a violator from noncompliance with the law. Economic benefit can result from a violator delaying or avoiding compliance costs or when a violator otherwise realizes illegal profits through its noncompliance. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in “significant” economic benefit to the violator. “Significant” is defined as an economic benefit that totals more than \$50 per room renovated per renovation project. ERPP at 8, 11, and 12.
15. The requirements of the PRE Rule are categorized as “hazard assessment” in nature, in that they are designed to provide owners and occupants of target housing, owners and proprietors of child occupied facilities, and parents and/or guardians of children under the age of 6 in a child-occupied facility with information that will allow them to weigh and assess the risks presented by renovations/abatements, and to take proper precautions to avoid the hazards. ERPP at 14.
16. The nature of the violation has an effect on the evaluation of the circumstance and extent categories which make up the gravity-based penalty. ERPP at 14 and 15.
17. The circumstances reflect the probability of harm resulting from a particular type of violation, with greater deviations from the regulations resulting in a greater likelihood that people will be uninformed about hazards associated with lead-based paint and any renovations/abatements, that exposures will be inadequately controlled during renovations/abatements or that residual hazards and exposures will persist after the renovation/abatement work is completed. ERPP at 15.
18. The Enforcement Response and Penalty Policy categorizes each of the various types of possible violations into one of six circumstance levels, 1 though 6, with level 1 having the

greatest deviation from the requirements and the corresponding greatest potential for harm. ERPP at 16.<sup>1</sup>

19. The requirement to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation, which is a requirement of 40 C.F.R. § 745.85(a)(1), is a Level 1 circumstance level violation.
20. The requirement to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, which is a requirement of 40 C.F.R. § 745.86(a), is a Level 6 circumstance violation.
21. The extent of harm from a particular type of violation is considered by evaluating the degree, range, or scope of the violations, with a focus on the overall intent of the rule, which is to prevent childhood lead poisoning. ERPP at 16.
22. The Enforcement Response and Penalty Policy categorizes the extent as either major, significant, or minor, based upon the risk of damage to human health or the environment, in consideration of the ages of any children and/or presence of a pregnant woman. ERPP at 16.
23. Where a pregnant woman and/or child under age 6 are involved, the extent is categorized as major. ERPP at B-1.
24. Where a child between ages 6 and 17 is involved, the extent is categorized as significant. ERPP at B-1.
25. Where no occupants are under age 18, the extent is categorized as minor. ERPP at B-1.
26. Respondent did not provide Complainant with any information stating whether any child or pregnant woman resided at each target housing identified in Counts 1 through 51, and

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<sup>1</sup> As the TSCA Civil Penalty Guidelines state, in assessing the probability of harm, “. . . a violation which presented a high probability of causing harm when it was committed . . . must be classified as a “high probability” violation and *penalized* as such, even if through some fortuity no actual harm resulted in that particular case. . . . The theory is that violators should be penalized for the violative conduct, and the “good” or “bad” luck of whether or not the proscribed conduct actually caused harm should not be an overriding factor in penalty assessment.” CX 6 at page 3, 45 Fed. Reg. 59772 (1980).

Counts 52 through 102. Using the assumption most favorable to Respondent, Mr. Cooper used the minor extent category for all violations.

27. With respect to each of the renovation transactions for each target housing described in Counts 1 through 51, there was no evidence that any children or pregnant women resided at any of these properties at the time of the contracted renovation work. Therefore, pursuant to the Enforcement Response and Penalty Policy, these 51 transactions and the 102 related violations fall into the minor extent category. ERPP at B-1.
28. Once the gravity-based penalty is determined for a given violation, upward or downward adjustments are applied in consideration of the following factors with respect to the violator: 1) ability to pay/ability to continue in business; 2) history of prior violations; 3) degree of culpability; and 4) such other factors as justice may require, which include EPA's Audit Policy, Small Business Policy, voluntary disclosures of violations, the violator's attitude, and special circumstances/extraordinary adjustments. ERPP at 9 and 17-24.
29. By letter dated March 7, 2011, Complainant advised Respondent that it was planning to file a civil administrative complaint against Respondent for alleged violations of Section 406(b), and that Section 16 of TSCA authorizes the assessment of a civil administrative penalty. Complainant asked Respondent to identify any factors Respondent thought Complainant should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, Complainant asked Respondent to submit financial documents for consideration by Complainant. CX 80.
30. In this matter, the undersigned, Scott Cooper, made the penalty determinations for Complainant after consultation with the members of EPA Region 5's Lead Team. A detailed description of the undersigned witness's penalty calculations is given below.

Findings Pertaining to the Gravity-Based Penalty Calculation of Individual Counts

31. For each violation in Counts 1 through 51, Mr. Cooper, after consulting Appendix A of the Penalty Policy, determined that the failure to provide the owners of the residential dwellings with the pamphlet and obtain from the owners a written acknowledgement that the owners have received the pamphlet or obtain certifications of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.85(a)(1), in 51 renovation transactions are each Circumstance Level 1b violations. ERPP at A-1.<sup>2</sup>

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<sup>2</sup> Note that the ERPP cites to the April 2008 recodified PRE Rule.

32. For each violation in Counts 1 through 51, failure to provide the owners of the residential dwellings with the pamphlet and obtain from the owners a written acknowledgement that the owners have received the pamphlet or obtain certifications of mailing at least 7 days prior to a renovation, the Enforcement Response and Penalty Policy's designation of each of these violations as Circumstance Level 1 means that each of these violations has a high probability of impacting human health and the environment. ERPP at 16.
33. In accordance with the Extent Category Matrix, Mr. Cooper determined that the 51 violations set forth in Counts 1 through 51 each fell into the minor extent category since there was no evidence of children or a pregnant woman residing at the target housing described in Counts 1 through 51 at the time of the violations of 40 C.F.R. § 745.85(a)(1). ERPP at B-1.
34. For Counts 1 through 51, Mr. Cooper calculated a gravity-based penalty of \$131,580 from the Gravity-Based Penalty Matrix, 51 minor extent, Circumstance Level 1b violation. Each of these 51 counts respectively has a gravity-based penalty of \$2,580. ERPP at B-1.
35. For each violation in Counts 52 through 102, Mr. Cooper, after consulting Appendix A of the Enforcement Response and Penalty Policy, determined that the failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, pursuant to 40 C.F.R. § 745.86(a), in each of 51 renovation transactions are Circumstance Level 6a violations. ERPP at A-3.
36. For each violation in Counts 52 through 102, failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, the Enforcement Response and Penalty Policy's designation of these violations as Circumstance Level 6 means that each of these violations has a low probability of impacting human health and the environment. ERPP at 16.
37. In accordance with the Extent Category Matrix, Mr. Cooper determined that 51 violations set forth in Counts 52 through 102 each fell into the minor extent category since there was no evidence of children or a pregnant woman residing at the target housing described in Counts 52 through 102 at the time of the violations of 40 C.F.R. § 745.86(a). ERPP at B-1.
38. For Counts 52 through 102, Mr. Cooper calculated a gravity-based penalty of \$13,260 from the Gravity-Based Penalty Matrix, 51 minor extent, Circumstance Level 6a violations. Each of these 51 counts respectively has a gravity-based penalty of \$260. ERPP at B-1.

39. The total initial gravity based penalty was calculated by adding together the two subtotal gravity based penalties for the 102 counts (\$131,580 + \$13,260). The initial gravity based penalty is \$144,840.

Findings Pertaining to the Consideration of Penalty Adjustment Factors:

40. The second stage in determining an appropriate penalty is to apply the four adjustment factors to the initial gravity based penalty. ERPP at 9 and 17-24.

Degree of Culpability

41. This factor may be used to increase or decrease the gravity-based penalty. TSCA is a strict liability statute for civil actions, so that culpability is irrelevant to the determination of legal liability. However, this does not render the violator's culpability irrelevant in assessing an appropriate penalty. Knowing or willful violations generally reflect an increased culpability on the part of the violator, and may even give rise to criminal liability. The culpability of the violator should be reflected in the amount of the penalty, which may be adjusted upward or downward by up to 25% for this factor. In assessing the degree of culpability, all of the following points should be considered:
- Amount of control the violator had over the events constituting the violation;
  - Level of sophistication (knowledge) of the violator in dealing with compliance issues; and
  - Extent to which the violator knew, or should have known, of the legal requirement that was violated. (For example, was the violator previously informed of the federal requirement to provide the "*Renovate Right*" pamphlet in a prior notice of a local code violation from a local permit or code office.) ERPP at 18.
42. Complainant has no information that the violations were intentional or that Respondent lacked sufficient knowledge and control to comply with the rule. Complainant has not increased the initial gravity based penalty for culpability.

History of Prior Such Violations

43. A prior history of violations of the PRE, RRP, or LBP Activities Rules should be reflected in the amount of the penalty. The gravity-based penalty matrices are designed to apply to "first offenders." Where a violator has demonstrated a similar history of "such violations" the Act requires the penalty to be adjusted upward by as much as 25% under the Guidelines for Assessment of Civil Penalties under Section 16 of TSCA. The need for such an upward adjustment is usually justified because the violator has not been sufficiently motivated to comply with the PRE, RRP, or LBP Activities Rules by the penalty assessed for the previous violation(s). For the purpose of this policy, EPA

interprets "prior such violations" to mean any prior violation(s) of the PRE, RRP, or LBP Activities Rules. ERPP at 18 and 19.

44. Since under the ERPP interpretation, Respondent had no history of prior violations, no adjustment to increase the gravity-based penalty was made under this factor.

Ability to Pay/Continue in Business –

45. On June 3, 2010, EPA obtained a Dun and Bradstreet report indicating that Respondent had sales of over \$27 million and a net worth of over \$1.4 million. CX 40.
46. By letter dated September 20, 2010 and a follow-up letter dated December 30, 2010 EPA requested specific financial information from Respondent to evaluate Respondent's ability to pay a penalty. CX 42 and CX 43.
47. Respondent did not provide EPA with the information requested in EPA's September 20, 2010 and December 30, 2010 letters.
48. As stated above, on March 7, 2011, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of the PRE Rule and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents. CX 80.
49. Respondent did not provide any financial information in response to EPA's March 7, 2011 letter.
50. Respondent has not provided EPA with the specific financial documents for EPA's financial consultant, Industrial Economics, Inc. to make a definitive determination as to Respondent's ability to pay the proposed penalty.<sup>3</sup> Therefore no adjustment to the initial gravity-based penalty has been made for ability to pay/ability to continue in business.

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<sup>3</sup> In its Answer, in response to Paragraph 42 of the Second Complaint, Respondent affirms that it has not provided the information requested in EPA's September 20, 2010 and December 30, 2010 letters, and notes that it "has advised Complainant on multiple occasions that it does not intend to provide ability to pay information to Complainant at this time."

## Other Factors

50. This provision allows an adjustment in settlement for four other factors (a-d) which may arise on a case-by-case basis. The factors discussed in this section may or may not be known at the time a pre-filing letter is sent or complaint is issued. To the extent that these and other relevant factors become known, proposed penalty adjustments may be made prior to issuing the complaint or at any time thereafter.
51. Voluntary disclosures of violations must be disclosed to EPA before the Agency receives any information about the violations or initiates an inspection or investigation of the firm or individual. No penalty reductions should be given under the Audit Policy, Small Business Policy, or for other voluntary disclosures where the penalties are based on inspections or other investigations. ERPP at 23.
  - a) Audit Policy
52. A renovator who conducts an audit and voluntarily self-discloses any violations of the PRE, RRP, or LBP Activities Rules under the "Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations" (65 FR 19618, April 11, 2000 (Audit Policy)), may be eligible for a reduction of the gravity-based penalty if all the criteria established in the audit policy are met. ERPP at 23.
53. No adjustment to the gravity based penalty has been made for the Audit Policy because the penalties are based on an EPA investigation and were not voluntarily disclosed.
  - b) Small Business Policy
54. A business with fewer than 100 employees may be eligible for a reduction of a gravity-based penalty under the EPA's Policy on Compliance Incentives for Small Business (Small Business Policy, June 10, 1996). ERPP at 23.
55. No adjustment to the gravity based penalty has been made for the Small Business Policy because the penalties are based on an EPA investigation and were not voluntarily disclosed.
  - c) Voluntary Disclosures
56. If a firm or individual self-discloses a violation of the PRE, RRP, or LBP Activities Rules but does not qualify for consideration under either the Audit Policy or the Small Business Policy, the proposed civil penalty amount may still be reduced for such voluntary disclosure. To encourage voluntary disclosures of violations, EPA may make a

reduction of up to 10% of the gravity-based penalty. An additional reduction up to 10% (for a total reduction of up to 20%) may be given to those violators who report the potential violation to EPA within 30 days of self-discovery of the violation(s). ERPP at 23.

57. No adjustment to the gravity based penalty has been made for other voluntary disclosures because the penalties are based on an EPA investigation and were not voluntarily disclosed.

d) Attitude

57. In cases where a settlement is negotiated prior to a hearing, after other factors have been applied as appropriate, EPA may reduce the resulting adjusted proposed civil penalty for attitude, if the circumstances warrant. In addition to creating an incentive for cooperative behavior during the compliance evaluation and enforcement process, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. The attitude adjustment has 3 components: cooperation; immediate steps taken to comply with the LBP rules; and early settlement.

- EPA may reduce the adjusted proposed penalty up to 10% based on a respondent's cooperation throughout the entire compliance monitoring, case development, and settlement process.
- EPA may also reduce the adjusted proposed penalty up to 10% for a respondent's immediate good faith efforts to comply with the violated regulation and the speed and completeness with which it comes into compliance.
- EPA may reduce the adjusted proposed penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents. ERPP at 24.

58. At the time the Complaint was filed, Respondent's demonstrated level of cooperation did not warrant a reduction in penalty, and the initial gravity-based penalty has not been reduced for this factor.

59. In summary, the Initial Gravity Based Penalty has not been increased or decreased for other factors as justice may require. The penalty as proposed in the Amended Complaint is \$144,840.

Economic Benefit of Noncompliance

60. After determining the initial gravity-based penalty and applying the appropriate adjustment factors, the resulting penalty must be sufficient to capture any economic

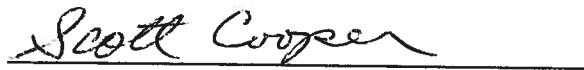
benefit of noncompliance. A renovator who has violated the PRE Rule requirements may not profit from its violative acts. ERPP at 8, 11 and 12.

61. Complainant believes the violations did not result in a significant economic benefit to the Respondent and that the \$144,840 proposed penalty would capture any benefit to Respondent from its noncompliance with the PRE Rule.

### CERTIFICATION

I hereby certify under penalty of law that the Explanation of Proposed Penalty set forth above accurately reflects the manner in which I calculated the penalty of \$144,840 proposed in the Complaint filed against Hanson's Window and Construction, Inc., Respondent, Docket No. TSCA-05-2011-0006. If called to testify as a witness, I am prepared to testify under oath to the accuracy of the statements contained in the Explanation of Proposed Penalty, based on my personal knowledge.

Signed:



Dated: May 18, 2011

Scott Cooper  
Environmental Protection Specialist  
Pesticides and Toxics Compliance Section  
Chemicals Management Branch  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5

C X 80



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5.

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 07 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7709 1680 0000 7666 4646

D.S. Berenson, Esquire  
Johanson Berenson LLP  
1146 Walker Road, Suite C  
Great Falls, Virginia 22066

Re: Notice of Intent to File Administrative Complaint

Dear Mr. Berenson:

The U.S. Environmental Protection Agency, Region 5 plans to file an administrative complaint for civil penalties against Hanson's Window and Construction, Inc., d/b/a under numerous trade names, including but not limited to, 800-Hansons and 1-800-Hansons, and numerous assumed names including, but not limited to, Hanson's Window & Siding World, Window & Siding, and Hanson's Window Company (Respondent).

We will allege that Respondent violated the Residential Property Renovation Rule codified at 40 Code of Federal Regulations (C.F.R.) Part 745, Subpart E, implementing Section 406(b) of Title IV of the Toxic Substances Control Act (TSCA), 15 United States Code § 2686(b).

If conducted improperly, renovations in housing with lead-based paint can create serious health hazards to workers and occupants by releasing large amounts of lead dust and debris. Section 406 of TSCA directed EPA to develop requirements for renovators to distribute a lead hazard information pamphlet to housing owners and occupants before conducting renovations in pre-1978 housing. EPA published a pamphlet and these requirements, referred to as the Residential Property Renovation Rule, which became effective on June 1, 1998.

In 2005, the Michigan Department of Community Health (MDCH) visited two homes where Respondents had replaced windows, and was told by the home owners that Respondents had not provided them with a pamphlet before conducting window replacement work in their homes. According to the MDCH, both home owners had young children under 2 years old residing with them that tested positive for elevated levels of lead in their blood following the window replacements conducted by Respondent.

Based on the information currently available to us, we will allege 102 violations of the Residential Property Renovation Rule, at 40 C.F.R. § 745.85(a)(1), and 40 C.F.R. § 745.86(a), in renovations conducted in the 51 residential housing units listed in Enclosure A. These violations include, at a minimum, Respondent's failure to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner a written acknowledgement of receipt at least 7 days prior to the renovation as required by 40 C.F.R. § 745.85(a)(1), and to retain records to demonstrate compliance as required by 40 C.F.R. § 745.86(a).

For the health and safety reasons stated above, we consider these violations to be very serious. We plan to propose a penalty of \$144,840.00 for these violations. In developing the proposed penalty, we considered the particular facts and circumstances of the case as well as EPA's penalty policy. We may also consider penalty mitigation in cases where a violator performs a Supplemental Environmental Project not otherwise required by law, such as a project that helps mitigate lead hazards in some other way.

This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order. Before filing the complaint, we are giving you the opportunity to present any information that you believe we should consider. Relevant information might include whether the property was constructed prior to 1978; evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial information bearing on your ability to pay a penalty.

If you may be financially unable to pay the proposed penalty amount, we will consider Respondent's ability to pay provided that you submit to us required financial documentation to support such a claim. If Respondent does intend to claim that it has an inability to pay the penalty proposed in this letter, then Complainant requests that Respondent provide documents to allow Complainant to assess Respondent's financial status. We therefore request that Respondent provide the following information:

1. Complete tax returns including all schedules and attachments for January 1, 2005 through the present;
2. Complete year-end financial statements, including the auditor's letter, balance sheet, income statement, statement of cash flows and notes, for January 1, 2005 through the present;
3. For the current fiscal year, year-to-date financial results by month, including a balance sheet, an income statement, and cash accounting, if available;
4. For the next two fiscal years, budget projections, including, if available, projected income statement, balance sheet, and statement of cash flows;
5. Copies of all currently active loans and line of credit agreements. Provide the current outstanding balance for each loan and the status of the loan. Identify the collateral/guarantees that the company and its owners provided to the bank(s) to secure the loans. Provide

documentation of any amendments to the agreements implemented or discussed during the last six months, all correspondence between the lender and Respondent regarding loan terms, and any other related documentation regarding the current status of the loan and line of credit. Identify if any loan agreements are with related parties;

6. Ownership and corporate management information:

- a. For Respondent, a current corporate map, including detailed information on corporate ownership and officers, for all levels of corporate relationship;
- b. Explain the relationship of Respondent to Hansons' Home Services, LLC, Hansons' Holdings LLC, Hansons' Windows & Siding of Lansing, LLC, Hansons' Windows & Siding of Kalamazoo, LLC, Hansons' Windows & Siding of Grand Rapids, LLC, Hansons' Windows & Siding of Saginaw, LLC, Hansons' Windows & Siding of Toledo, LLC, and Hansons' Windows & Siding of Columbus, LLC, Interstate Financial Corporation, AAA Interstate Financial Mortgage Services, Hanson's Home Finance, Hanson's Home Loans, and Interstate Financial Mortgage Services; and

- c. Identify any other businesses affiliated with Respondent and explain the relationship of Respondent to each such affiliated business;

7. Provide an itemization of the fixed assets currently owned by Respondent (e.g., an asset ledger) that shows a brief description of the asset, the year it was put in service, the original cost, the accumulated depreciation and an estimate of the current market value; and

8. Provide estimates of the current market value for each parcel of land, improvements, and equipment owned by Respondent.

Please note that the financial information requested above is only necessary if Respondent intends to assert that it is unable to pay the penalty amount that the Complainant has proposed, above.

We have enclosed an information sheet titled: "*U.S. EPA Small Business Resources*" which may be helpful if Respondents qualify as small businesses.

You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Please note that in connection with all applicable claims, EPA may determine that certain information may not be entitled to confidential treatment subject to 40 C.F.R. §§ 2.204(d)(2) or 2.208 but may constitute an invasion of privacy and, on that basis, may be withheld from disclosure to the general public. Such personal privacy information may include tenant social security numbers, current addresses, or other personal information related to a tenant. It is not necessary for a business confidentiality claim to be made in order for EPA to withhold personal privacy information. Therefore, whether you choose to make a business confidentiality claim or

not, please clearly indicate personal privacy information contained in your response so that EPA can evaluate whether the information constitutes an invasion of privacy.

We may use any information you submit in support of an administrative, civil, or criminal action. Within 5 calendar days after you receive this letter, please send your response to:

Scott Cooper (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

We plan to file the complaint against you 10 calendar days after you receive this letter, unless you give us information that the complaint is not substantially justified.

If you have any questions, please telephone Mr. Cooper at (312) 886-1332, or have your attorney contact either Mary McAuliffe at (312) 886-6237 or Mark Palermo at (312) 886-6082. Thank you for your prompt attention to this matter.

Sincerely,



Mardi Klevs  
Chief  
Chemicals Management Branch  
Land and Chemicals Division

Enclosure



Office of Enforcement and Compliance Assurance  
**INFORMATION SHEET**

**U. S. EPA Small Business Resources**

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

**Compliance Assistance Centers**

([www.assistancecenters.net](http://www.assistancecenters.net))

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

**Agriculture**

([www.epa.gov/agriculture](http://www.epa.gov/agriculture) or 1-888-663-2155)

**Automotive Recycling Industry**

([www.ecarcenter.org](http://www.ecarcenter.org))

**Automotive Service and Repair**

([www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK)

**Chemical Industry**

([www.chemalliance.org](http://www.chemalliance.org))

**Construction Industry**

([www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911)

**Education**

([www.campuserc.org](http://www.campuserc.org))

**Healthcare Industry**

([www.hercenter.org](http://www.hercenter.org) or 1-734-995-4911)

**Metal Finishing**

([www.nmfrc.org](http://www.nmfrc.org) or 1-734-995-4911)

**Paints and Coatings**

([www.paintcenter.org](http://www.paintcenter.org) or 1-734-995-4911)

**Printed Wiring Board Manufacturing**

([www.pwrc.org](http://www.pwrc.org) or 1-734-995-4911)

**Printing**

([www.pneac.org](http://www.pneac.org) or 1-888-USPNEAC)

**Transportation Industry**

([www.transource.org](http://www.transource.org))

**Tribal Governments and Indian Country**

([www.epa.gov/tribal/compliance](http://www.epa.gov/tribal/compliance) or 202-564-2516)

**US Border Environmental Issues**

([www.bordercenter.org](http://www.bordercenter.org) or 1-734-995-4911)

The Centers also provide State Resource Locators ([www.envcap.org/statetools/index.cfm](http://www.envcap.org/statetools/index.cfm)) for a wide range of topics to help you find important environmental compliance information specific to your state.

**EPA Websites**

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

**EPA's Home Page**

[www.epa.gov](http://www.epa.gov)

**Small Business Gateway**

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

**Compliance Assistance Home Page**

[www.epa.gov/compliance/assistance](http://www.epa.gov/compliance/assistance)

**Office of Enforcement and Compliance Assurance**

[www.epa.gov/compliance](http://www.epa.gov/compliance)

**Voluntary Partnership Programs**

[www.epa.gov/partners](http://www.epa.gov/partners)



## U.S. EPA SMALL BUSINESS RESOURCES

### **Hotlines, Helplines & Clearinghouses**

([www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm))

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

#### **Clean Air Technology Center**

([www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800)

#### **Emergency Planning and Community Right-To-Know Act**

([www.epa.gov/superfund/resources/infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346)

**EPA's Small Business Ombudsman Hotline** provides regulatory and technical assistance information. ([www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888)

**The National Environmental Compliance Assistance Clearinghouse** provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers ([www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse))

**National Response Center** to report oil and hazardous substance spills.

([www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802)

#### **Pollution Prevention Information Clearinghouse**

([www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799)

#### **Safe Drinking Water Hotline**

([www.epa.gov/safewater/hotline/index.html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791)

#### **Stratospheric Ozone Refrigerants Information**

([www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996)

**Toxics Assistance Information Service** also includes asbestos inquiries.

(1-202-554-1404)

#### **Wetlands Helpline**

([www.epa.gov/owow/wetlands/wetline.html](http://www.epa.gov/owow/wetlands/wetline.html) or 1-800-832-7828)

### **State Agencies**

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

#### **EPA's Small Business Ombudsman**

([www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888)

#### **Small Business Environmental Homepage**

([www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org) or 1-724-452-4722)

### **Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

#### **The Small Business Compliance Policy**

([www.epa.gov/compliance/incentives/smallbusiness](http://www.epa.gov/compliance/incentives/smallbusiness))

#### **Audit Policy**

([www.epa.gov/compliance/incentives/auditing](http://www.epa.gov/compliance/incentives/auditing))

### **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### **Your Duty to Comply**

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*

ENCLOSURE A

**Redacted**

(Respondent claims information as Confidential Business Information)

CK81

CX 81

**Redacted**

(Respondent claims information as Confidential Business Information)