

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven C. Schlang 3/16/11  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2010-0026

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Permanent Siding and Windows, LLC  
230 Peper Farm Road, Suite E  
Milford, CT 06460

Total Dollar Amount of Receivable \$ 30,702 Due Date: 9/11/11

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>ST</sup> \$ 15,351 on 4/14/11

2<sup>ND</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>RD</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>TH</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>TH</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 Post Office Square Suite 100  
Boston, MA 02109

Steven C. Schlang  
Enforcement Counsel  
617-918-1773 (phone)  
617-918-1809 (fax)

RECEIVED  
MAR 15 2011  
EPA ORC WS  
Office of Regional Hearing Clerk

March 15, 2011

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square  
Mail Code – ORA18-1  
Boston, Massachusetts 02109-3912

Re: In the Matter of: Permanent Siding and Windows, LLC  
Docket Number: TSCA-01-2010-0020

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of the Consent Agreement and Final Order and Memorandum to Jill T. Metcalf, Acting Regional Judicial Officer, regarding the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,



Steven C. Schlang

cc: David Speranzini, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

RECEIVED

MAR 15 2010

EPA ORC  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In re: )  
)  
)  
Permanent Siding and Windows, LLC ) Docket No. TSCA-01-2010-0020  
230 Pepes Farm Road, Suite E )  
Milford, CT 06460 ) **CONSENT AGREEMENT and**  
) **FINAL ORDER**  
)  
Respondent )  
)  
)  
Proceeding under Section 16(a) )  
of the Toxic Substances Control )  
Act, 15 U.S.C. § 2615(a). )  
\_\_\_\_\_ )

**INTRODUCTION**

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA") and Permanent Siding and Windows, LLC ("Respondent" or "Permanent Siding"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of the Pre-Renovation Education Rule, 40 C.F.R. §§ 745.84 and 745.86, and Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689. Failure to comply with any regulatory requirement set forth in 40 C.F.R. §§ 745.84 and 745.86 constitutes a violation of TSCA 409, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA are subject to the assessment of civil and/or criminal penalties.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 16 of TSCA, 15 U.S.C. § 2615. Complainant and Respondent (the "Parties") agree that settlement of this matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of

settling this matter;

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of law or fact herein, the Parties agree to comply with the terms of this CAFO.

**I. PRELIMINARY STATEMENT**

1. EPA alleges that Respondent violated TSCA Section 406(b), 15 U.S.C. § 2686(b) and the federal regulations promulgated thereunder, set forth in 40 C.F.R. §§ 745.84 and 745.86 ("Pre-Renovation Education Rule") on at least 17 occasions by failing to provide EPA's lead hazard information pamphlet to the owner or an adult occupant of pre-1978 housing units at least 60 days prior to beginning renovation activities at their properties. Specifically, Respondent replaced windows and doors and/or disturbed greater than 20 square feet of exterior painted surface at each pre-1978 housing unit. These 17 renovations took place between January 2006 and September 2007.

**II. GENERAL ALLEGATIONS**

2. Respondent is a limited liability company with its principal place of business located in Milford, Connecticut.

3. Respondent is a "person" as defined at 40 C.F.R. § 745.83.

4. Respondent is a contractor specializing in spray-on vinyl siding ("SOS") on exterior walls. Although SOS constitutes the majority of the Respondent's business, Respondent also performs window and door replacements and other small renovations on residences in its ordinary course of business.

5. On March 30, 2009, an EPA inspector conducted an inspection ("inspection") at Respondent's headquarters to evaluate Respondent's compliance with the Pre-Renovation

Education Rule for a time period beginning in January 2006 and ending in March 2009. Joseph Felix, Respondent's managing member, was present during the inspection, as was Respondent's counsel.

6. During the inspection, Respondent produced documentation pertaining to all renovation projects from January 2006 to September 2007. Specifically, Respondent conducted renovation projects involving the replacement of windows, doors, and/or rotted wood at the following 17 housing units:

1. 65 Dydo, Uncasville CT
2. 1860 North Peters Lane, Stratford CT
3. 11 Bramlay Road, West Hartford CT
4. 8 Lamson Street, West Haven CT
5. 1096 Tolland Stage Road, Tolland CT
6. 33 Clifton Avenue, Waterbury CT
7. 393 Bow Lane, Middletown CT
8. 26 Money Point Road, Mystic CT
9. 61 Coe Road, Wolcott CT
10. 102 East Pearl, New Haven CT
11. 72 Hallsey Lane, Woodbridge CT
12. 16 Billow Road, Old Lyme CT
13. 9 Apache Drive, Brookfield CT
14. 423 Jennings Avenue, Bridgeport CT
15. 221 Mountain Brook Drive, Cheshire CT

16. 38 Cottage Street, Unionsville CT

17. 42 West Maidea Lane, Monroe CT

7. During the inspection, Mr. Felix stated that he had been unaware of the TSCA 406(b) requirements until EPA contacted him to schedule an inspection. Therefore, he had not furnished EPA's lead-hazard information pamphlet to the owners of the 17 housing units listed in Paragraph 6 above at which Respondent conducted renovation activities.

8. According to statements and documents provided by Respondent, the housing units listed in Paragraph 6 above all meet the definition of "target housing," as defined in 40 C.F.R. § 745.103. Specifically, "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

9. According to statements and documents provided by Respondent, the activities that Respondent performed at the target housing units listed in Paragraph 6 above were "renovations," as defined in 40 C.F.R. § 745.83.

10. According to statements and documents provided by Respondent, Respondent is a "renovator" as defined in 40 C.F.R. § 745.83 because Respondent performs renovations for compensation.

11. According to statements and documents provided by Respondent, the renovations that Respondent performed at the target housing units listed in Paragraph 6 above did not constitute: (a) minor repairs and maintenance activities that disrupted 20 square feet or less of an exterior painted surface; (b) emergency renovation operations; (c) any work that is an abatement project within the meaning of 40 C.F.R. § 745.223; or (d) renovations in which a written

determination has been made by an inspector (certified pursuant to either 40 C.F.R. § 745.226 or a State or Tribal certification program authorized pursuant to 40 C.F.R. § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, as those activities are described in 40 C.F.R. § 745.82.

### **III. VIOLATIONS**

12. Forty C.F.R. § 745.84(a)(1) requires that no more than 60 days before beginning renovation activities in any unit of target housing, the renovator shall provide the owner of the unit with a full and complete copy of the EPA lead hazard information pamphlet developed under Section 406(a) of TSCA (the "EPA pamphlet"), or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose ("State or Tribal pamphlet"), and either: (i) obtain, from the owner, a written acknowledgment that the owner has received the EPA pamphlet; or (ii) obtain a certificate of mailing at least seven days prior to the renovation. If the owner does not occupy the dwelling unit, 40 C.F.R. § 745.84(a)(2) requires that the renovator must also provide an adult occupant of the unit with the pamphlet and either: (i) obtain a written acknowledgement from the adult occupant that the pamphlet has been received; (ii) certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgement from an adult occupant; or (iii) obtain a certificate of mailing at least seven days prior to the renovation.

13. On 17 occasions, Respondent failed to provide a copy of the EPA pamphlet or any State or Tribal pamphlet to the owner or adult occupant of the target housing units listed in

Paragraph 6 above at any time before Respondent began renovation activities, in violation of 40 C.F.R. § 745.84(a)(1) and (2).

14. Respondent failed to obtain from the owners or adult occupants of the 17 target housing units listed in Paragraph 6 above a written acknowledgment that they ever received from the Respondent a copy of the EPA pamphlet or any State or Tribal pamphlet prior to the start of the renovation, in violation of 40 C.F.R. § 745.84(a)(1) and (2).

15. Respondent also failed to obtain, at least seven days prior to initiating renovation activities at the 17 target housing units listed in Paragraph 6 above, certificates of mailing the EPA pamphlet or any State or Tribal pamphlet, in violation of 40 C.F.R. § 745.84(a)(1) and (2).

16. Pursuant to 40 C.F.R. §§ 745.87(a) and (d), Respondent's failure to comply with 40 C.F.R. § 745.84(a)(1) and (2) constitutes 17 violations of 40 C.F.R. § 745.84(a)(1) and (2) and TSCA Section 409, 15 U.S.C. § 2689, that subjects the Respondent to civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615.

#### IV. TERMS OF SETTLEMENT

17. Permanent Siding stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue.

18. Permanent Siding hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement. Without admitting or denying the factual findings or allegations herein, Respondent consents to this CAFO.

19. This CAFO shall apply to and be binding upon Permanent Siding, its officers,



directors, agents, successors and assigns.

20. Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

21. Respondent certifies that it is now operating its business in compliance with Section 406(b) of TSCA, 15 U.S.C. § 2686(b) and 40 C.F.R. § 745.84.

22. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), in light of the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is \$30,702.

23. a. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, with the title of the CAFO ("In Re: Permanent Siding and Windows, LLC") and docket number ("TSCA-01-2010-0020") noted on the check, to the order of the "Treasurer, United States of America," in the amount of \$15,351 to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check must be mailed to the Regional Hearing Clerk:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
Mailcode ORA18-1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and to:

Steven C. Schlang  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
Mailcode OES04-4  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

b. Within one hundred and eighty-two (182) days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check for \$15,581 (\$15,351 principle plus \$230 interest) using the same procedure, information and mailing addresses specified in above sub-paragraph 23.a.

c. If Respondent fails to make the first penalty payment in full by its due date, the due date of the remaining scheduled penalty payment under this CAFO shall be accelerated to the due date of the missed payment date.

24. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

25. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent.

26. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA, 15 U.S.C. §§ 2601 et seq., or any regulations promulgated thereunder.

27. Failure by Respondent to pay the penalty and interest (\$30,932) in full by the due

dates specified in above paragraph 23 shall subject Respondent to stipulated penalties in accordance with Paragraphs 32-34 below, plus additional interest at current prevailing rates from the effective date of this CAFO. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d).

28. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

29. To further ensure compliance with the requirements cited in Paragraph 21 above, Respondent shall submit to EPA a Compliance Report ("Compliance Report") by August 31, 2011, containing the following documentary evidence of its compliance with the Pre-Renovation

Education Rule for the five months following the effective date of this CAFO:

- a. A list of each contract into which Respondent entered to perform a renovation at a target housing unit where windows were replaced and/or where more than 20 square feet of exterior painted surface were disturbed; and
  - b. Copies of all documents demonstrating compliance with the Pre-Renovation Education Rule, including the acknowledgments of receipt of EPA pamphlets or certificates that the pamphlets have been mailed.
30. Respondent shall submit the Compliance Report by first class mail to:

Sharon Hayes  
U.S. EPA, Region 1  
Mailcode OES05-4  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and

Steven C. Schlang  
U.S. EPA, Region 1  
Mailcode OES04-4  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912.

31. Permanent Siding shall maintain legible copies of documentation of the underlying data for the Compliance Report for three years (in accordance with 40 C.F.R. § 745.86) from the date of the report and shall provide the documentation to EPA not more than ten (10) days after a request for such information. In its Compliance Report, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in the Compliance Report is true, accurate, and not misleading by signing the following statement:

*I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that,*

*based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

32. In the event that Respondent fails to pay the penalty in a timely manner or fails to submit the Compliance Report in accordance with Paragraphs 29-31 above, Respondent shall pay the following stipulated penalties:

a. for failure to pay the civil penalty by the dates specified in Paragraph 23, Respondent shall pay \$200 per day until the penalty amount, plus interest at current prevailing rates from the effective date of this CAFO, is received by EPA; and

b. for failure to submit the Compliance Report to EPA by the date specified in Paragraph 29, Respondent shall pay \$100 per day until the Compliance Report is received by EPA.

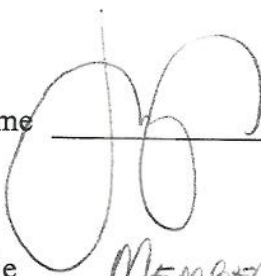
33. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity, even if no notice of such violation is sent to Respondent.

34. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA. Respondent shall pay interest on any stipulated penalty, or portion thereof, that is not paid within fifteen (15) days of EPA's written demand. Payment of stipulated penalties and interest, if any, shall be made by certified or cashier's check payable to "Treasurer, United States of America in accordance with the procedures specified in Paragraph 23 above.

35. Each party shall bear its own costs and fees in this proceeding, including attorney fees, and Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

36. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

FOR PERMANENT SIDING AND WINDOWS, LLC

Name  \_\_\_\_\_ Date 3/1/11 \_\_\_\_\_

Title MEMBER \_\_\_\_\_  
Permanent Siding and Windows, LLC

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Joanna B. Jerison  
Legal Enforcement Office Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

3/14/11  
Date

In the Matter of Permanent Siding and Windows, LLC  
TSCA-01-2010-0020

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Jill T. Metcalf  
Jill T. Metcalf, Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

March 15, 2011  
Date



**In the Matter of: Permanent Siding and Windows, LLC**  
**Docket Number TSCA-01-2010-0020**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy  
hand delivered:

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
Mailcode ORA18-1  
5 Post Office Square  
Boston, MA 02109-3912

Copy by Certified Mail-  
Return Receipt Requested

David Speranzini, Esq.  
Jacobi & Case, P.C.  
57 Plains Road  
Suite 2B  
Milford, Connecticut 06461-2573

Date: \_\_\_\_\_

3/16/11



Steven C. Schlang  
Office of Environmental Stewardship U.S.  
Environmental Protection Agency  
Region I  
Five Post Office Square, Suite 100  
Mail Code OES04-4  
Boston, MA 02109-3219  
tel: (617) 918-1773  
fax: (617) 918-0773