



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 21 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Todd Benson, Owner  
Windows Plus of Pensacola  
2626 North T Street  
Pensacola, Florida 32502

Re: Windows Plus of Pensacola  
Ratified Consent Agreement and Final Order  
Docket No. TSCA-04-2017-2507(b)

Dear Mr. Benson:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

We are in receipt of your check dated 12/28/2016, in the amount of \$5,550.00. Therefore, no further action is needed on your part pursuant to paragraph 12 of the CAFO.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Mary Summers of the EPA staff at (404) 562-9188 or email [summers.mary@epa.gov](mailto:summers.mary@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "AToney", with a long horizontal flourish extending to the right.

Anthony G. Toney  
Chief

Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

HEARING CLERK

2017 FEB 21 AM 7:15

OFFICE OF REGIONAL  
ADMINISTRATOR

In the Matter of: )

Windows Plus of Pensacola )

Respondent. )

) Docket No.: TSCA-04-2017-2507(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) is vested in the Administrator of the United States Environmental Protection Agency. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. In accordance with 40 C.F.R. § 22.3(a), the Complainant in this matter is the Director of the Air, Pesticides and Toxics Management Division. Respondent is **Windows Plus of Pensacola**, a company doing business in the State of Florida.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. Pursuant to Sections 402 and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2682 and 2686, the Administrator of the EPA promulgated Residential Property Renovation Rules at 40 C.F.R. Part 745, Subpart E including the Pre-Renovation Education Rule, the Renovation, Repair and Painting Rule, and the Lead-Based Paint Activities Rule. It is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with any of the rules issued under 40 C.F.R. Part 745, Subpart E.
4. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Ms. Mary Summers  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9188

## **III. Specific Allegations**

5. Respondent is a “firm” that performs “renovations” for compensation as those terms are defined, by 40 C.F.R. § 745.83. Respondent performed renovation activities at a residential units located at: 4735 Anchor Lane, Pensacola, Florida, on August 26, 2016; 1573 Chippendale Circle,

Pensacola, Florida, on May 31, 2016; 4513 Cherbourg Way, Pensacola, Florida, on February 22, 2016; 315 E. Palmetto, Pensacola, Florida, on March 31, 2016; and 401 South 1<sup>st</sup> Street, Pensacola, Florida on February 5, 2016. These residential units are “target housing,” as that term is defined by 40 C.F.R. § 745.103.

6. Based on information provided by Respondent to the EPA, dated August 11, 2016, the EPA alleges that Respondent violated Sections 402 and 406 of TSCA and 40 C.F.R.

Part 745, Subpart E as follows:

- a. Respondent failed to obtain initial Lead Certification from the EPA before conducting renovations on any pre-1978 properties for compensation under 40 C.F.R. § 745.89(a) pursuant to 40 C.F.R. § 745.81(a)(2)(ii);
- b. Respondent failed to provide a copy of the EPA’s Lead Hazard Information Pamphlet, entitled “Renovate Right” under 40 C.F.R. § 745.84(b)(1)(i) pursuant to 40 C.F.R. § 745.84(a)(1); to each owners of the properties identified in paragraph 5, and failed to obtain written acknowledgement from the owners that they had received the pamphlets; and
- c. Respondent failed to establish and maintain records, or to make available such records, under 40 C.F.R. § 745.86(b) pursuant to 40 C.F.R. § 745.87(b).

#### **IV. Consent Agreement**

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
8. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the Final Order accompanying the Consent Agreement.

9. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in the Final Order section of this CAFO.
10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart E.
11. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

#### **V. Final Order**

12. Respondent is assessed a civil penalty of **Five Thousand, Five Hundred Fifty Dollars (\$5,550)** which shall be paid within thirty (30) days after the effective date of this CAFO.
13. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America."

**The Respondent shall note on the face of the check the Respondent's Name and the Docket Number TSCA-04-2017-2507(b).**

The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS) (excluding USPS overnight mail):

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Phone Number: (314) 425-1819

14. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Mary Summers  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

15. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
16. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts.
- In addition, under the Adequate Response Requirement of the CAFO Policy, a late payment may require Formal Enforcement Procedures be employed to collect any principal amount not paid

within 30 days of the due date.

17. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
18. This CAFO shall be binding upon the Respondent, its successors and assigns.
19. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**The remainder of this page intentionally left blank.**

**VI. Effective Date**

20. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent:** Windows Plus of Pensacola  
**Docket No.:** TSCA-04-2017-2507(b)

By: T. Benson (Signed) Date: 13 JAN 2017-

Name: TODD BENSON (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

**Complainant:** U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Beverly H. Banister Date: 2/2/17  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 17<sup>th</sup> day of February, 2017.

By: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of: Windows Plus of Pensacola, Docket Number: TSCA-04-2017-2507(b), to the addressees listed below in the manner indicated:

Todd Benson, Owner  
Windows Plus of Pensacola  
2626 North T Street  
Pensacola, Florida 32502

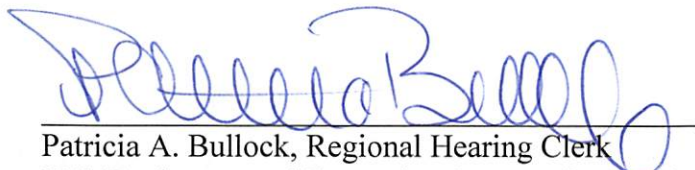
(via Certified Mail, Return Receipt Requested)

Mary Summers  
Lead and Asbestos Section  
Air, Pesticides and Toxics Management Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Robert Caplan, Senior Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

  
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Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

Date: 2-21-17