

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

and

THE STATE OF MICHIGAN,

Plaintiffs,

v.

HANSON'S WINDOW AND  
CONSTRUCTION, INC.,

Defendant.

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Case Number

Honorable

CONSENT DECREE

I. BACKGROUND

WHEREAS, Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA") has, simultaneously with the lodging of this Consent Decree, filed a Complaint alleging violations of section 406(b) of Title IV of the Toxic Substances Control Act ("TSCA"), 15 United States Code ("U.S.C.") § 2686(b), 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, Hanson's Window & Siding, and Hanson's Window Company ("Defendant"); and

WHEREAS, the State of Michigan ("Co-Plaintiff" or the "State"), on behalf of the Michigan Department of Community Health ("MDCH"), joined the complaint as a co-plaintiff alleging, pursuant to the Michigan Abatement Act and corresponding rules, MCL 333.5453-5477 and R325.99101-99408, that Defendant violated R325.99408(6) and (7) until October 10, 2007, and violated R.325.99409 (which became effective on October 11, 2007, and amended R325.99408(6) and (7)); and

WHEREAS, the Complaint alleges, inter alia, that Defendant violated the requirements of Section 406(b) of TSCA, 15 U.S.C. § 2686(b), and the regulations promulgated thereunder, specifically, the Requirements for Hazard Education Before Renovation of Target Housing Rule, codified at 40 C.F.R. Part 745, Subpart E ("Residential Property Renovation Rule"), specifically the requirements for hazard notification and education; and

WHEREAS, the United States alleges it is entitled to seek injunctive relief in a judicial action, including, but not limited to, an order requiring Defendant to comply with the Residential Property Renovation Rule under Section 17 of TSCA, 15 U.S.C. § 2616 and to ensure compliance through development and implementation of written standard operation procedures; and

WHEREAS, the United States alleges that Defendant is subject to administrative civil penalties by U.S. EPA under Section 16 of TSCA, 15 U.S.C. § 2615; and

WHEREAS, the State of Michigan alleges that Defendant is subject to administrative penalties under MCL 333.5476(1); and

WHEREAS, by their respective undersigned representatives, Plaintiffs and Defendant, having agreed that settlement of this action has been negotiated by the parties in good faith and that this Consent Decree is fair, adequate, reasonable, consistent with applicable law and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action; and

WHEREAS, subject to the requirements in Section XVIII, below, Plaintiffs and Defendant consent to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission by Defendant of fact or law, and without any admission by Defendant of the violations alleged in the Complaint, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 17 of TSCA, 15 U.S.C. § 2616; and over the parties to this action. The Complaint states claims upon which the Court

can grant relief against Defendant, 15 U.S.C. § 2616 and 28 U.S.C. § 1355. In addition, venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

2. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### III. PARTIES BOUND

3. This Consent Decree shall apply to and be binding upon the United States, the State and upon Defendant, (acting through its officers, directors, servants, employees, and agents), and upon Defendant's successors and assigns.

4. No change in corporate status or ownership shall affect Defendant's obligations under this Consent Decree. At least thirty (30) days prior to transferring ownership or operation of any part of the corporation, Defendant shall give notice of the terms of this Consent Decree to the prospective successor owner or operator of the corporation or portion thereof, and shall simultaneously verify to U.S. EPA and the State of Michigan in writing, in the manner set forth in Section XIV (Notice) that such notice has been given. No such sale or transfer shall relieve Defendant of any obligation set forth

herein unless agreed to in writing by the United States and approved by the Court.

#### IV. DEFINITIONS

5. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in 15 U.S.C. §§ 2601 to 2692, or in regulations promulgated thereunder shall have the meanings set forth in such definitions.

6. Whenever the terms listed below are used in this Consent Decree and Attachment A, the following definitions shall apply:

a. "Child-occupied facility" shall have the same meaning as set forth in 40 C.F.R. § 745.83.

b. "Consent Decree" shall mean this Consent Decree and all attachments hereto, and all modifications of this Consent Decree. The requirements of Attachment A to this Consent Decree are incorporated herein by reference and made a directly enforceable part of this Consent Decree.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period will run until the close of business of the next Working day.

d. "Interest" shall mean interest pursuant to 28 U.S.C. § 1961.

e. "Lead-Based Paint" shall mean 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.

f. "Lead-Based Paint Inspection" shall mean a surface-by-surface investigation to determine the presence of Lead-Based Paint and the provision of a report explaining the results of the investigation.

g. "Lead-Based Paint Free" shall mean housing that has been found to be 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.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic number or upper case letter.

i. "Parties" shall mean the United States of America, the State of Michigan, and Defendant.

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

k. "State of Michigan" shall mean the State of Michigan acting on behalf of the State of Michigan Department of Community Health.

l. "TSCA" means the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2692.

m. "Target Housing" shall mean "target housing" as defined in TSCA, 15 U.S.C. § 2681(17), excluding housing that is Lead-Based Paint Free as determined by a Lead-Based Paint Inspection performed by a certified risk assessor or certified lead-based paint inspector.

n. "United States" shall mean the United States of America acting on behalf of the United States Environmental Protection Agency.

o. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

#### V. COMPLIANCE PROGRAM

7. Defendant shall comply with all applicable requirements of Section 406(b) of TSCA and its implementing regulations and Michigan Administrative Rule R325.99409.

8. No later than 30 days following entry of this Consent Decree, Defendant shall develop and submit written Standard Operating Procedures ("SOP") designed to ensure Defendant's compliance with Section 406(b) of TSCA and its implementing regulations, and Michigan Administrative Rule R.325.99409. Such written SOP shall include, among other things, procedures for ensuring timely delivery of a copy of the EPA-approved pamphlet, currently, "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools," before

renovation work begins, acknowledgement of receipt of the pamphlet by an adult occupant or attempted delivery, and retention of records documenting compliance with TSCA Section 406(b) and Michigan Administrative Rule R.325.99409.

9. U.S. EPA's Acceptance of SOP.

a. Following receipt of the SOP described in Paragraph 8, above, U.S. EPA will do one of the following: (1) notify the Defendant that the SOP is satisfactory; (2) reject the SOP, notify the Defendant, in writing, of deficiencies in the SOP and grant Defendant an additional thirty (30) days in which to correct any deficiencies; or (3) reject the SOP, and seek Stipulated Penalties in accordance with Paragraph 24 herein. Disputes between U.S. EPA and the Defendant concerning the SOP shall be resolved in accordance with Section X (Dispute Resolution).

b. No later than 30 days following U.S. EPA's acceptance of the SOP, Defendant shall comply with the approved SOP and shall continue to comply with the approved SOP for at least three years following the date of U.S. EPA's acceptance of the SOP, or until completion of the State Supplemental Environmental Project described in Paragraphs 15-17, below, whichever date is later.

c. In the event the SOP is not completed as described in this Consent Decree, Stipulated Penalties shall be

due and payable by Defendant to U.S. EPA in accordance with Section VIII, below.

10. Periodic Reports.

a. Following U.S. EPA's acceptance of the SOP, Defendant shall submit Periodic Reports to the United States and the State within thirty (30) days after the end of each calendar quarter while this Consent Decree is in effect. The Periodic Reports shall indicate the status of Defendant's compliance with the SOP during the preceding calendar quarter.

b. Defendant agrees that failure to submit any Periodic Report required by subparagraph a., above shall be deemed a violation of this Consent Decree and Defendant shall become liable for stipulated penalties pursuant to Paragraph 25 below.

VI. PAYMENT OF PENALTY

11. Within thirty (30) days after entry of this Consent Decree, Defendant shall pay a total civil penalty of fifty thousand dollars (\$50,000) as an administrative penalty to the United States by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case Number 90-5-1-1-08900, and the civil action case name and case number of the Eastern District of Michigan. The costs of such EFT shall be Defendant's responsibility. Payment shall be made in accordance with instructions provided to Defendant by the

Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Michigan. Any funds received after 5:00 p.m. (Central) shall be credited on the next business day. Defendant shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-1-1-08900, and the civil action case name and case number, to the U.S. Department of Justice and to U.S. EPA, as provided in Section XIV (Notice).

12. If Defendant fails to timely make the payment required under this Section, Interest shall accrue on any unpaid amounts until the total amount due has been received.

13. Defendant shall not deduct the penalty paid to the United States, or any Interest or Stipulated Penalties, paid under this Consent Decree from its federal, or state, income taxes, and the United States does not in any way release Defendant from any claims arising under Title 26 of the United States Code.

**VII. PERFORMANCE OF STATE SUPPLEMENTAL ENVIRONMENTAL PROJECT**

14. Defendant shall complete a supplemental environmental project ("SEP"), as described in Paragraph 15 and Attachment A to this Consent Decree. The parties agree that this SEP is intended to secure significant environmental or public health protection and improvements.

15. For the State SEP ("the Windows SEP") described in Attachment A, Defendant shall provide windows with a retail

value of two hundred and fifty thousand dollars (\$250,000) to the State of Michigan for installation in Target Housing. The Windows SEP shall commence beginning in January 2013, and shall be completed by no later than December 31, 2017. Defendant shall conduct the Windows SEP in accordance with the schedule in Attachment A. Defendant shall provide windows to the State that comply with the Minimum Window Specifications in Attachment A. Defendant shall include documentation of the value of windows provided in connection with the Windows SEP as part of the SEP Completion Report referred to in Paragraph 17, below. However, Defendant shall have no obligation to provide windows not ordered by MDCH by December 31, 2017.

16. Defendant hereby certifies the truth and accuracy of each of the following:

a. that all cost information provided to MDCH in connection with the State SEP is complete and accurate and that Defendant in good faith estimates that the market value to implement the State SEP is \$250,000;

b. that as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, State or local law or regulation; nor is Defendant required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case;

c. that the SEP was not a project that Defendant was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; and

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person.

17. SEP Completion Report. Defendant shall submit a SEP Completion Report to the State of Michigan for the State SEP identified in Attachment A no later than 30 days after Defendant has provided the agreed upon number of specified windows to MDCH, or February 1, 2018, whichever date is earlier. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any operating problems encountered and the solutions thereto;

c. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and

d. The State SEP Completion Report shall include the number of windows and the retail value of each window, determined as set forth in Attachment A, and shall confirm that

the windows meet the Minimum Window Specifications set forth in Attachment A.

18. Periodic Reports. Beginning in January 2013, Defendant shall submit Periodic Reports to the State within thirty (30) days after the end of each calendar quarter while this Consent Decree is in effect, except for the calendar quarter in which the SEP Completion Report is due and thereafter. The Periodic Reports shall indicate the status of the Work relating to the SEP, including a statement of the value for that period for the State SEP, the number of windows, the retail value of each window, the addresses where such windows were installed by MDCH, a statement that the windows met the Minimum Window Specifications in Attachment A, and a statement of the value remaining for full completion of the Windows SEP.

19. Defendant agrees that failure to submit the SEP Completion Report or any Periodic Report required by Paragraphs 17 and 18, above shall be deemed a violation of this Consent Decree and Defendant shall become liable for stipulated penalties pursuant to Paragraph 25 below.

20. In all documents or reports pertaining to the State SEP, including, without limitation, the Periodic Reports and the SEP Completion Report, submitted to the State of Michigan pursuant to this Consent Decree, Defendant shall, by a person authorized to do so, sign and certify under penalty of law that

the information contained in such document or 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.

21. State of Michigan's Acceptance of SEP Completion

Report:

a. Following receipt of the State SEP Completion

Report described in Paragraph 17, above, the State will do one of the following: (1) notify the Defendant that the SEP Completion Report is satisfactory; (2) reject the SEP Completion Report, notify the Defendant, in writing, of deficiencies in the SEP Completion Report and grant Defendant an additional thirty (30) days in which to correct any deficiencies; or (3) reject the SEP Completion Report and seek stipulated penalties in accordance with Paragraph 25 herein. Except as provided below in Subparagraph b., disputes between the State and the Defendant concerning the State SEP Completion Report shall be resolved in accordance with Section X (Dispute Resolution).

b. In the event the SEP is not completed or performed as described in this Consent Decree, stipulated

penalties shall be due and payable by Defendant to the State of Michigan in accordance with Paragraph 25, below.

22. Nothing in this Consent Decree is intended to authorize the Defendant to perform lead-based paint hazard abatement work.

#### VIII. STIPULATED PENALTIES

23. The Defendant shall be liable for Stipulated Penalties to the United States and to the State for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure) and subject to the dispute resolution provisions of Section X (Dispute Resolution). Defendant shall pay total stipulated penalties for the State SEP to the State as set forth in Paragraph 25. All other stipulated penalties under this Consent Decree shall be divided equally between the United States and the State.

24. a. For failure to submit the SOP required by Paragraph 8, above, Defendant shall pay a total stipulated penalty in the amount of \$1,000 to the United States and the State for each day after the SOP is originally due until the SOP is submitted.

b. Payment of any stipulated penalty for failure to submit the SOP shall not affect or resolve Defendant's liability for violations of federal and/or State laws, including but not

limited to violations of TSCA Section 406(b) and/or Michigan Administrative Rule R.325.99409.

c. For failure to submit any Periodic Report required by Paragraph 10, above, Defendant shall pay a total stipulated penalty in the amount of \$650 to the United States and the State for each day after the Report is originally due until the Report is submitted.

25. In the event that Defendant fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEP described in Paragraph 15, above, and/or to the extent that the value for the Windows SEP does not equal or exceed the cost of the SEP described in Paragraph 15, above, and/or Defendant does not provide windows that conform to the Minimum Window Specifications set forth in Attachment A, Defendant shall be liable to the State for Stipulated Penalties according to the provisions set forth below:

a. For failure to timely and satisfactorily comply with the delivery of windows by the ready date and as set forth in Attachment A, Defendant shall pay a total stipulated penalty to the State in the amount of \$400 per day.

b. For failure to provide windows that meet the Minimum Window Specifications as set forth in Attachment A, discovered prior to installation of windows, in addition to providing windows that do meet the Minimum Window

Specifications, Defendant shall pay a stipulated penalty to the State in the amount of \$300 per window.

c. For failure to provide windows that meet the Minimum Window Specifications as set forth in Attachment A, discovered after installation of windows, in addition to providing windows that do meet the Minimum Window Specifications, Defendant shall pay a stipulated penalty to the State in the amount of \$600 per window.

d. For failure to submit a SEP Completion Report required by Paragraph 17, above, Defendant shall pay a total stipulated penalty to the State in the amount of \$900 for each day following the 31st day after Defendant has provided the agreed upon number of specified windows to MDCH until such SEP Completion Report is submitted.

d. For failure to submit any Periodic Report required by Paragraph 18 above, Defendant shall pay a total stipulated penalty in the amount of \$650 to the State for each day after the Report is originally due until the Report is submitted.

26. Defendant shall pay stipulated penalties within thirty (30) days of receipt of written demand by the United States or the State of Michigan for such penalties, unless the Defendant initiates dispute resolution in accordance with Section X

(Dispute Resolution). Interest and late charges shall be paid as stated in Section XII herein.

27. Nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the United States and the State of Michigan to seek any other remedies or sanctions available by virtue of Defendant's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree, even where those violations concern the same event (e.g., submission of a written submittal that is late and is of unacceptable quality).

28. Stipulated Penalties shall continue to accrue as provided in Paragraph 27, above, during any Dispute Resolution, with Interest as provided in Section XII, below, but need not be paid until the following:

a. If the dispute pertains to the State SEP and is resolved by agreement of the State and Defendant, the Defendant shall pay accrued penalties determined to be owing, together with interest, to the State within thirty (30) days of the

effective date of the agreement or the receipt of the State's determination;

b. If the dispute pertains to any aspect of this Consent Decree other than the State SEP and is resolved by agreement of the United States, State and Defendant, the Defendant shall pay fifty (50%) of the accrued penalties determined to be owing, together with interest, to the United States and fifty (50%) to the State, within thirty (30) days of the effective date of the agreement or the receipt of the United States' and State's determination;

c. If the dispute is appealed to the Court and the United States and/or the State prevails in whole or in part, the Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within thirty (30) days of receiving the Court's decision or order, except as provided in Subparagraph d., below;

d. If any Party appeals the District Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with Interest, within thirty (30) days of receiving the final appellate court decision.

e. If the Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, the Defendant shall be liable for Interest on such penalties, as

provided for in Section XII, below, accruing from the date payment became due until full payment is made.

29. Subject to the provisions of Section XII of this Consent Decree, the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State for the Defendant's violation of this Consent Decree or applicable law.

30. No payments under this Section shall be deducted for State and federal tax purposes.

31. Notwithstanding any other provision of this Section, U.S. EPA and the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **IX. FORCE MAJEURE**

32. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" include anticipating any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the

greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

33. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of force majeure, Defendant shall provide notice in writing, as provided in Section XIV of this Consent Decree (Notice), within ten (10) days of the time Defendant first knew of, or by the exercise of due diligence should have known that the event may cause a delay. Such notification shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendant's rationale for attributing such delay to a force majeure event. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, its contractors, or any entity controlled by Defendant knew or should have known.

34. Defendant shall have the burden of proving, by a preponderance of the evidence, that each event described in the preceding Paragraph was a force majeure event; that Defendant gave the notice required by the preceding Paragraph; that Defendant took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay it claims was attributable to the force majeure event was caused by that event.

35. a. If the United States, after consultation with the State, agrees that the delay was caused by a Force Majeure event, the Parties shall stipulate to an extension of time for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. An extension of time for performance of the obligations affected by a force majeure event shall not, of itself, extend the time for performance of any other obligation.

b. For matters related to the State SEP as set forth in Attachment A, if the State agrees that the delay was caused by a Force Majeure event, the Parties shall stipulate to an extension of time for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. An extension of time for performance of the obligations affected by a force majeure event

shall not, of itself, extend the time for performance of any other obligation.

c. Any dispute arising under this Section shall be subject to Dispute Resolution as set forth in Section X below.

#### X. DISPUTE RESOLUTION

36. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States or the State to enforce obligations of the Defendant that have not been disputed in accordance with this Section, and do not limit the right of the United States or the State to bring an action for emergency injunctive relief.

#### 37. Informal Dispute Resolution.

a. (i) Except for disputes pertaining to the State SEP, any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed twenty (20) days from the time Defendant sends the United States and the State a written Notice of Dispute in accordance with Section XIV of this Consent Decree (Notice), unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. The failure to

submit a Notice of Dispute within ten (10) days from the date upon which the issue in dispute first arises waives Defendant's right to invoke dispute resolution under this Section.

b. For any dispute that arises with respect to the State SEP identified in Attachment A, such dispute shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed (twenty) 20 days from the time Defendant sends the State a written Notice of Dispute in accordance with Section XIV of this Consent Decree (Notice), unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. The failure to submit a Notice of Dispute within ten (10) days from the date upon which the issue in dispute first arises waives Defendant's right to invoke dispute resolution under this Section.

38. Formal Dispute Resolution.

a. (i) Except for disputes pertaining to the State SEP, if the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the United States shall be considered binding unless, within sixty (60) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures by serving on the United States and the State, in accordance with Section XIV of this Consent

Decree (Notice), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation.

(ii) For disputes pertaining to the State SEP, if the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the State shall be considered binding unless, within sixty (60) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures by serving on the State, in accordance with Section XIV of this Consent Decree (Notice), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation.

b. (i) Except for disputes pertaining to the State SEP, within sixty (60) days after receipt of Defendant's Statement of Position, the United States, after consulting with the State, will serve on Defendant its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within fourteen (14) days after receipt of the United States' Statement of Position, Defendant may submit a Reply.

(ii) For disputes pertaining to the State SEP, within sixty (60) days after receipt of Defendant's Statement of Position, the State will serve on Defendant its Statement of

Position, including any supporting factual data, analysis, opinion or documentation. Within fourteen (14) days after receipt of the State's Statement of Position, Defendant may submit a Reply.

c. (i) Except for disputes pertaining to the State SEP, an administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by U.S. EPA or submitted by Defendant, shall constitute the administrative record upon which the matter in dispute is to be resolved.

(ii) For disputes pertaining to the State SEP, an administrative record of the dispute shall be maintained by the State and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by the State or submitted by Defendant, shall constitute the administrative record upon which the matter in dispute is to be resolved.

### 39. Resolution of Disputes.

a. (i) Except for disputes pertaining to the State SEP, the Director of the Land and Chemicals Division, U.S. EPA Region 5, will issue a final decision resolving the matter in

dispute based upon the administrative record maintained by U.S. EPA pursuant to Paragraph 38.c.(i), above. The decision of the Land and Chemicals Division Director shall be binding upon Defendant, subject only to the right to seek judicial review, in accordance with Subparagraph b, below.

(ii) For disputes pertaining to the State SEP, the Director of the Michigan Department of Community Health or his or her designee will issue a final decision resolving the matter in dispute based upon the administrative record maintained by the State pursuant to Paragraph 38.c.(ii), above. The decision of the Director of the Michigan Department of Community Health or her designee shall be binding upon Defendant, subject only to the right to seek judicial review, in accordance with Subparagraph b.(ii), below.

b. (i) Except for disputes pertaining to the State SEP, the decision issued by U.S. EPA under Subparagraph a, above, shall be reviewable by this Court upon a motion filed by Defendant and served upon the United States and the State within thirty (30) days of receipt of U.S. EPA's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Defendant relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

(ii) For disputes pertaining to the State SEP, the decision issued by the State under Subparagraph a.(i), above, shall be reviewable by this Court upon a motion filed by Defendant and served upon the State within thirty (30) days of receipt of the State's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Defendant relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

c. In any judicial proceeding pursuant to Subparagraph b.(i) or (ii), above, any judicial review shall be limited to the administrative record.

d. (i) Except for disputes pertaining to the State SEP, the invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 28, above. In the event that Defendant does not prevail on the disputed issue,

stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

(ii) For disputes pertaining to the State SEP, the invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, not directly in dispute, unless the State or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 28, above. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

**XI. COMPLIANCE WITH OTHER LEGAL REQUIREMENTS**

40. The Defendant shall perform all actions required pursuant to this Consent Decree in accordance with all applicable local, state, and federal laws and regulations.

41. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 15 U.S.C. §§ 2601 to 2692. Notwithstanding the United States' review and approval of any documents submitted to it by

Defendant pursuant to this Consent Decree, Defendant shall remain solely responsible for compliance with the terms of the Act and this Consent Decree.

**XII. INTEREST**

42. If Defendant fails to make timely payment of the civil penalty or Stipulated Penalties due under this Consent Decree, Defendant shall be liable for Interest, as defined in Section IV, and penalties. Such late penalty payment(s) shall include the following:

(i) Interest for any period after the due date;

and

(ii) A six percent per annum penalty charge if the civil or stipulated penalty is not paid within ninety (90) days after the due date.

**XIII. PUBLIC ACCESS TO INFORMATION**

43. All information and documents submitted by Defendant to EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported by Defendant as confidential business information in accordance with 40 C.F.R. Part 2. All information and documents submitted by Defendant to the State pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported by Defendant as confidential business information in accordance

with the Michigan Freedom of Information Act, 1976 PA 442; MCL 15.231, et seq.

44. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the State, the public may be given access to such documents or information without further notice in accordance with the Michigan Freedom of Information Act, 1976 PA 442; MCL 15.231, et seq.

#### XIV. NOTICE

45. Defendant shall submit all notices and reports required by this Consent Decree in accordance with Section XIV (Notice) of this Consent Decree.

46. Unless otherwise provided herein, notifications to or communications with U.S. EPA, the U.S. Department of Justice, and the State of Michigan shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

47. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

*U.S. Attorney's Office:*

Chief, Civil Division  
U.S. Attorney's Office, Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226

*U.S. Department of Justice:*

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

*U.S. Environmental Protection Agency:*

Chief, Pesticides and Toxics Compliance Section  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard (LC-8J)  
Chicago, IL 60604

*State of Michigan Attorney General's Office:*

Michigan Department of Attorney General  
G. Mennen Williams Building, 7<sup>th</sup> Floor  
525 W. Ottawa St.  
P.O. Box 30212  
Lansing, MI 48909

*State of Michigan Department of Community Health*

Wesley F. Priem, Section Manager  
Healthy Homes Section  
Michigan Department of Community Health  
Capitol View Building  
201 Townsend, 4<sup>th</sup> Floor  
P.O. Box 30195  
Lansing, MI 48909

*Defendant:*

Jackalyn Gilmer  
Email:  
Fax: 248-577-0984

and

Kevin M. Tierney, Esq.  
Johanson Berenson LLP  
1146 Walker Road, Suite C  
Great Falls, Virginia 22066-1838

XV. GENERAL PROVISIONS

48. This Consent Decree resolves only the civil claims of the United States and the State for the violations specifically alleged in the Complaint in this action through the date of lodging of the Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any other civil, or any criminal liability of the Defendant.

49. This Consent Decree shall not relieve Defendant of its obligation to comply with all applicable provisions of federal, State or local law, or regulations, or with any order of the Court; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

50. Compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to federal laws and regulations administered by U.S. EPA.

51. This Consent Decree does not limit or affect the rights of Defendant, the United States or the State against any third parties, not party to this Consent Decree, nor does it

limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

52. Each Party to this action shall bear its own costs and attorney's fees in the action resolved by this Consent Decree.

53. Any material modification of this Consent Decree or Attachment A must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all parties to this Consent Decree. Non-material modifications to this Consent Decree or Attachment A may be made by written approval of the Plaintiffs and the Defendant.

**XVI. RETENTION OF JURISDICTION**

54. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

**XVII. TERMINATION**

55. This Consent Decree shall terminate after all of the following have occurred:

a. Defendant has completed the Compliance Program required under Section V of this Consent Decree;

b. Defendant has completed the State SEP in accordance with Attachment A under Section VII of this Consent Decree;

c. Defendant has paid all penalties and interest due under this Consent Decree and no penalties are outstanding or owed to the United States or the State of Michigan;

d. Defendant has certified compliance with the terms and conditions of this Consent Decree to the United States; and

e. The United States and the State of Michigan have not disputed Defendant's certification. If the United States or the State of Michigan disputes Defendant's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court. If the United States and the State of Michigan do not contest the certification, the United States and the State of Michigan shall petition or the Parties shall jointly petition the Court to terminate the Consent Decree.

#### XVIII. PUBLIC COMMENT

56. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. If no comments are received or no changes are proposed in response to

public comments, Defendant consents to entry of the Consent Decree without further notice.

**XIX. SIGNATORIES**

57. Each undersigned representative of Defendant, the Deputy Chief of the Environmental Enforcement Section of the U.S. Department of Justice, and the State of Michigan certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to this Decree.

58. Defendant agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

59. Defendant hereby agrees to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons, and to accept service of the Complaint filed in this action by regular U.S. mail. The Parties agree that Defendant need not file an answer to the Complaint unless or until the Court expressly declines to enter this Consent Decree.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

\_\_\_\_\_  
United States District Judge

Through their undersigned representatives, the parties agree and consent to entry of this Consent Decree in United States of America and State of Michigan v. Hanson's Window and Construction, Inc.

FOR PLAINTIFF, UNITED STATES OF AMERICA:

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division

s/W. Benjamin Fisherow, w/consent                      Date: August 6, 2011  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

s/Elise S. Feldman, w/consent                      Date: August 11, 2011  
ELISE S. FELDMAN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
301 Howard Street  
San Francisco, CA 94105

BARBARA L. McQUADE  
United States Attorney

s/Carolyn Bell Harbin                                      Date: August 11, 2011  
CAROLYN BELL HARBIN  
Assistant U.S. Attorney  
Eastern District of Michigan  
211 West Fort Street, Suite 2001  
Detroit, Michigan 48226  
(313) 226-9114  
Carolyn.  
(P27350)

United States of America and State of Michigan v. Hanson's Window  
and Construction, Inc.

s/Susan Hedman, w/consent

Date: August 1, 2011

SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604  
(312) 886-3000

s/Robert A. Kaplan, w/consent

Date: July 26, 2011

ROBERT A. KAPLAN  
Regional Counsel  
U. S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604  
(312) 886-6675

s/Mary T. McAuliffe, w/consent

Date: July 25, 2011

MARY T. MCAULIFFE  
MARK PALERMO  
Associate Regional Counsels  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604  
(312) 886-6237

United States of America and State of Michigan v. Hanson's Window  
and Construction, Inc.

FOR THE STATE OF MICHIGAN:

s/Santiago Rios, w/consent  
BILL SCHUETTE, ATTORNEY GENERAL  
by SANTIAGO RIOS  
Assistant Attorney General  
Health, Education & Family Services  
Division  
525 W. Ottawa Street  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-7700

Date: August 9, 2011

(P48199)

United States of America and State of Michigan v. Hanson's Window  
and Construction, Inc.

FOR HANSON'S WINDOW AND CONSTRUCTION, INC.:

By: s/Kevin M. Tierney, w/consent  
KEVIN M. TIERNEY, ESQ.  
Johanson Berenson LLP  
1146 Walker Road, Suite C  
Great Falls, Virginia 22066-1838

Date: July 25, 2011

United States and the State of Michigan v. Hanson's Window and Construction, Inc.  
ATTACHMENT A

WINDOWS SEP

The State of Michigan Department of Community Health or its designee ("MDCH") will identify potential Target Housing where one or more children reside in the State of Michigan. MDCH will identify specifications for each project addressing lead hazards in accordance with the United States Department of Housing and Urban Development Guidelines and MDCH within the selected Target Housing.

Pursuant to Paragraph 15 of the Consent Decree, Defendant shall provide windows with a retail value of two hundred and fifty thousand dollars (\$250,000) to MDCH, Healthy Homes Section (HHS) for installation in Target Housing for completion of the Windows SEP. The Windows SEP shall be completed within 48 months of the commencement date of the Windows SEP. Defendant shall detail the progress made in the Periodic and Final SEP Reports required in Paragraphs 17 and 18 of the Consent Decree.

Defendant shall conduct the Windows SEP in accordance with the following schedule, which shall commence on January 1, 2013:

ACTIVITY	DATE
1. MDCH contractors shall use an ordering form agreed upon by Defendant and MDCH for satisfying the conditions of the Windows SEP. Defendant will provide MDCH with Alside-manufactured windows of either the Excalibur or Sheffield line, at MDCH's option, valued at the pricing described in this Attachment A, below. In the event of a change in window manufacturers during the term of the Consent Decree, Defendant will provide the window specifications for each potential manufacturer and window line to MDCH at least 60 calendar days prior to the first order of that window line for MDCH approval. MDCH will have 60 calendar days to approve or deny the window line and inform Defendant in writing. Defendant will only supply MDCH with windows that are approved by MDCH. Defendant	Ongoing

<p>shall prioritize the ordering of windows ordered by MDCH in the same manner as the ordering of windows for Defendant's installers. MDCH will place orders with Defendant's project manager liaison for windows on a per job basis, and will include the number, type, and size of windows, measured tip to tip, necessary for that job and any other specification identified by the Defendant to fulfill the order. During the term of this Windows SEP, the "ready date" shall be 21 calendar days from the order date for window orders placed before Tuesday at 3:00 P.M. in any given week. Window orders that contain windows with tempered glass or other special features that would delay the "ready date" beyond 21 calendar days shall have a "ready date" no later than 30 calendar days for window orders placed before Tuesday at 3:00 P.M. in any given week. Defendant shall make windows available for pick up by MDCH's installers at Defendant's Troy, Michigan warehouse facility or other agreed upon place of designation by the "ready date". For purposes of this Windows SEP, December 24 – January 1 of any year will not be considered calendar days.</p>	
<p>2. Defendant shall provide the agreed upon number of specified windows to MDCH.</p>	<p>At a "ready date" identified and committed to by Defendant, no later than within 30 Calendar Days of Activity #1.</p>

Changes to the requirements listed in the preceding Table may be considered non-material modifications under Paragraph 53 of the Consent Decree, provided Defendant (1) achieves the requirement to provide windows with a retail value of \$250,000 to MDCH for completion of the Windows SEP as specified in this Attachment A and the Consent Decree, and (2) obtains prior written approval of the change(s) from EPA and MDCH as provided in Paragraph 53 of the Consent Decree.

MDCH will take window measurements and other necessary dimensions for the windows at the selected target housing. MDCH will submit these measurements to Defendant. The windows will be made available at Defendant's Troy, Michigan warehouse facility at a "ready date" identified and committed to by Defendant, but no later than 30 calendar days after MDCH's order, as set forth in the Table, above.

Defendant will supply MDCH with windows that meet the following Minimum

Window Specifications:

COMPONENT	MINIMUM WINDOW SPECIFICATIONS
Overall Unit	Energy Star Rated for Michigan
Overall Unit	Vinyl thickness .065" or greater
Overall Unit	National Fenestration Rating Council (NFRC) tested for U-factor, solar heat gain coefficient, visible transmittance and condensation resistance.
Overall Unit	Both temporary and permanent label with Certified Product Directory (CPD) number and test numbers.
Main Frame	Fusion – welded
Sash	Fusion – welded
Exterior Frame	Raised screen track
Sill	Sloped or Pocketed with Weep Holes
Meeting Rail	Interlocking. Steel reinforced over 36" in width. Two Locks when over 22" in width.
Pivot Alignment System	Pivot bars with stops
Balance system	Stainless Steel constant force ¾". Double coils if sash is over 9 lbs.
Tilt latches	Flush-mount
Sash Removal	Tilt-in / Lift-out
Glazing bead	Dual-durometer Exterior glazed
Glass penetration into the sash	5/8"
Glass strength	Single -2.5 mm
Glass type	Clear -low-E with argon
Insulating glass thickness	¾" or larger overall
Spacer system	Intercept
Screen Frame	Rollformed or Extruded
Screen Mesh	Fiberglass or non metal screening
Screen Style	Full or half
Lift Mechanism	Extruded lift rail
Weather seals	Closed cell foam or foam filled frame. Weather seal with center strip.
Cam Lock	Dual
Vent Latch	Single or Dual

Following installation of Defendant's windows, MDCH shall make the initial response to any homeowner complaint regarding windows and/or window replacement by visiting the home to determine whether there is a defect in any window(s) supplied by

Defendant. MDCH will notify Defendant's project manager liaison of any MDCH determination that a window is defective. Defendant shall provide a manufacturer's warranty on the windows as specified by the window manufacturer. Windows approved by MDCH shall have a minimum manufacturer's warranty period of not less than 10 years on parts. The warranty shall not be required to warrant the contractor's installation work or problems caused thereby. Warranty paperwork shall be part of every window order and provided to the MDCH contractor at the time of window pick-up or delivery.

Window Values (these numbers are based on general market conditions and do not reflect confidential business information of Defendant):

1. Alside; Excalibur windows:

a. For purposes of this Windows SEP, a standard, white double hung and double slider window up to 100 united inches (UI) using low-E glass and other materials typically used by Defendant shall have a value of \$229.00. The following values in addition to the \$229.00 shall apply to windows other than standard:

- i. Oversize windows: \$3.19 per UI over 100 UI
- ii. Tempered glass: \$24.00 per lite; \$70.00 per lite if over 100 UI
- iii. Muntins: \$15.00 per lite
- iv. Almond: 5% premium
- vi. Hoppers: \$181.00 each
- vii. End vent:
  - Up to 100 UI: \$232.71
  - 101 to 135 UI: \$2.93 per UI
  - 136 to 150 UI: \$3.76 per UI
  - 151 to 170 UI: \$4.99 per UI
  - 171 UI and up: \$5.64 per UI
- viii. Picture windows:
  - Up to 75 UI: \$56.99
  - 76 to 120 UI: \$194.71
  - 121 to 136 UI: \$2.46 per UI
  - 137 to 160 UI: \$3.40 per UI
  - 161 UI and up: \$5.59 per UI

2. Alside; Sheffield windows:

For any window orders, MDCH may opt to purchase an upgraded Alside Sheffield line of window. The final cost of an Alside Sheffield window will be the final cost of an Alside Excalibur window of the same size, color, and configuration, plus an additional 14%.

Price listed above shall be the approved price as of January 1, 2013. A price increase may be requested by Defendant any time the supplier price increases. Requests for a price increase shall be submitted to MDCH in writing along with verifiable documentation from the supplier. MDCH may at its discretion verify an industry price increase from outside sources for the supplier before a price increase is approved. MDCH will have 30 days to approve or deny a price increase and will inform Defendant in writing. A price increase proposed to MDCH will not exceed the percent price increase to Defendant.

Defendant shall designate a project manager liaison to address issues that may arise during the course of this Windows SEP. Defendant's project manager liaison shall be (subject to change by Defendant):

Telephone: 1-800 426-7667 ext. 3101  
Fax: 248-577-0984  
Email: jgilmer@hansons.com  
Liaison: Jackalyn Gilmer

MDCH shall designate a project liaison, who will meet monthly with the Defendant's project manager liaison at Defendant's manufacturing facility or by telephone or e-mail, to discuss any issues that arise under this Attachment A.

Defendant will offer instruction at Defendant's Troy, Michigan warehouse facility or other agreed upon location to MDCH contractors addressing any and all MDCH

contractor questions and concerns on how to properly install Defendant's windows. Such instruction will be provided in a timely manner as reasonably requested by MDCH contractors.

Upon completion of each installation project, MDCH will take clearance samples and complete a visual inspection.

Disputes between the State of Michigan and the Defendant concerning this Attachment A that cannot be resolved at the monthly meeting held between Defendant's project manager liaison and the MDCH project liaison shall be resolved in accordance with Section X (Dispute Resolution) of the Consent Decree.