

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

UNITED STATES OF AMERICA,

and

THE STATE OF MICHIGAN,

Plaintiffs,

v.

WALLSIDE, INC.,

Defendant.

Case Number 09CV12317

Honorable AVERN COHN

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 Wallside, Inc., d/b/a Wallside Windows ("Wallside" or "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); 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") and R325.99408(6) and (7), specifically the requirement 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

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, Defendant's entry into this Consent Decree and its performance of its obligations hereunder demonstrate that Defendant, its principals and its key employees, have the willingness and ability to maintain compliance with environmental statutes and regulations; and

WHEREAS, subject to the requirements in Paragraph 54, 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 and Complaint in Intervention, 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

XIII (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.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

6. 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.

7. Whenever the terms listed below are used in this Consent Decree and Attachments A and B, 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. 1The requirements of Attachments A and B 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. "Lead-Safe Work Practices" shall mean work performed in accordance with Attachment B involving removing

and/or installing windows in all Target Housing and Child-occupied facilities.

i. "Lead-Safe Work Practices Trained Worker," or "LSWP Worker," shall mean a person trained under a HUD-approved lead-safe work practices course provided by an existing State-accredited training provider.

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

k. "Parties" shall mean the United States of America, the State of Michigan, and Wallside, Inc.

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

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

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

o. "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.

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

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

r. "Work" shall mean all activities Defendant is required to perform under Section VII of this Consent Decree.

V. COMPLIANCE WITH RESIDENTIAL PROPERTY RENOVATION RULE AND STATE OF MICHIGAN LEAD HAZARD CONTROL ADMINISTRATIVE RULES

8. Defendant shall comply with all applicable requirements of Section 406(b) of TSCA and its implementing regulations codified at 40 C.F.R. Part 745, Subpart E, and Michigan Administrative Rule R325.99408(6) and (7).

VI. PAYMENT OF PENALTY

9. Within thirty (30) days after entry of this Consent Decree, Defendant shall pay a total civil penalty of one hundred thousand dollars (\$100,000), as follows:

a. Fifty thousand dollars (\$50,000) of the civil penalty shall be paid 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 90-5-1-1-08899, 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 90-5-1-1-08899, 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 XIII (Notice).

b. Fifty thousand dollars (\$50,000) of the penalty shall be paid to the State of Michigan. Such penalty shall be paid by cashier's check or certified check made payable to the "State of Michigan," as per MCL 333.5473, and sent to Michigan Department of Community Health, Accounting Division, P.O. Box 30437, Lansing, Michigan 48909, including codes "70330 84361".

10. If Defendant fails to timely make the payments required under this Section, it shall be subject to Stipulated Penalties pursuant to Paragraph 24 of this Consent Decree. In addition, Interest shall accrue on any unpaid amounts until the total amount due has been received.

11. Defendant shall not deduct the penalty paid to the United States or the State, or any Interest or Stipulated Penalties, paid under this Consent Decree from its federal, state, or local 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 SUPPLEMENTAL ENVIRONMENTAL PROJECTS

12. Defendant shall complete two supplemental environmental projects ("SEPs"), as described in Paragraphs 13 and 14 and Attachment A to this Consent Decree. The parties agree that these SEPs are intended to secure significant environmental or public health protection and improvements.

13. For the State SEP ("the Windows SEP") described in Attachment A, Defendant shall provide windows with a retail value of three hundred and fifty thousand dollars (\$350,000) to the State of Michigan for installation in Target Housing. The Windows SEP shall be completed within 42 months of the date of entry of this Consent Decree by the Court. Defendant shall conduct the Windows SEP in accordance with the schedule in Attachment A. Defendant shall include documentation of the value of windows provided in connection with the Windows SEP as part of the SEPs Completion Report referred to in Paragraph 16, below. However, Defendant shall have no obligation to provide

windows not ordered by MDCH within 42 months after entry of this Consent Decree.

14. a. For the Lead-Safe Work Practices SEP ("LSWP SEP") described in Attachment B, notwithstanding the estimated date in Paragraph 15.a., below, which is for the purpose of a good faith estimate of the cost to implement the LSWP SEP, beginning no later than thirty (30) days after entry of this Consent Decree, for all window replacement work by or on behalf of Defendant in Target Housing and Child-occupied facilities, Defendant shall use only LSWP Workers as defined in Paragraph 7, above, using Lead-Safe Work Practices as set forth in Attachment B; provided, however, that non-LSWP Workers may be used on work that does not have the potential to disturb paint, including clean up not covered by Attachment B. Defendant shall begin implementing this SEP no later than thirty days after entry of this Consent Decree, and shall continue the SEP for no less than 36 months, except as provided in Subparagraph 14.b.

b. At such time as U.S. EPA's final regulation on renovation and remodeling under Section 402 of TSCA becomes fully effective and applicable to Defendant, this final regulation shall supersede the Lead-Safe Work Practice requirements of this Consent Decree set forth in Paragraph 14.a., above, and in Attachment B.

c. Upon request by MDCH or U.S. EPA, the Defendant shall provide any existing information reasonably necessary to determine compliance with this Paragraph and Attachment B through on-site inspection by MDCH or its authorized representative. Such information may include, but is not limited to, the addresses where window installation by the Defendant's installers is scheduled to occur, and dates when window installation by the Defendant's installers is scheduled to occur.

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

a. that all cost information provided to EPA and MDCH in connection with EPA's approval of the SEPs is complete and accurate and that Defendant in good faith estimates that the market value to implement the State SEP is \$350,000, and the cost to implement the LSWP SEP is \$235,000, assuming that the LSWP SEP commences on August 15, 2009;

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

c. that the SEPs were not projects 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 either SEP; and

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

16. The Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the LSWP SEP.

17. SEP Completion Reports. Defendant shall submit SEP Completion Reports to U.S. EPA for the LSWP Federal SEP identified in Attachment B and to the State of Michigan for the State SEP identified in Attachment A by December 31, 2011. The SEP Completion Reports shall contain the following information:

a. A detailed description of each 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;

d. A description of the environmental and public health benefits resulting from implementation of the SEP;

e. 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

f. The LSWP SEP Completion Report shall include a detailed description of how Defendant has assured that its employees and contractors are LSWP Workers and are complying with the Lead-Safe Work Practices as specified in Attachment B.

18. Periodic Reports. Defendant shall submit Periodic Reports to U.S. EPA and 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 Reports are due and thereafter. The Periodic Reports shall indicate the status of the Work relating to each SEP, a statement of the value for that period for the State SEP, including the number of windows, the retail value of each window, the address where such windows were delivered, and a statement of the value remaining for full completion of the Windows SEP, and a detailed description of how Defendant has assured that its employees and contractors are LSWP Workers who are complying with Lead-Safe Work Practices as set forth in Attachment B.

19. Defendant agrees that failure to submit both of the SEP Completion Reports 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 24 below.

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

21. In all documents or reports, including, without limitation, the Periodic Reports and the SEP Completion Reports, submitted to U.S. EPA and 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.

22. U.S. EPA and State of Michigan's Acceptance of SEP Completion Reports:

a. (i) Following receipt of the LSWP SEP Completion Report described in Paragraph 17, above, U.S. EPA 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 24 herein. Except as provided below in Subparagraph b., disputes between U.S. EPA and the Defendant concerning the LSWP SEP Completion Report shall be resolved in accordance with Section IX (Dispute Resolution).

(ii) 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 24 herein. Except as provided below in Subparagraph b., disputes between and the Defendant concerning the State SEP Completion Report

shall be resolved in accordance with Section IX (Dispute Resolution).

b. (i) If U.S. EPA elects to exercise option a.(i)(2) above, U.S. EPA shall permit Defendant the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this Paragraph within ten (10) days of receipt of such notification. U.S. EPA and Defendant shall have an additional thirty (30) days from the receipt by the U.S. EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, U.S. EPA shall provide a written statement of its decision to Defendant, which decision shall be final and binding upon Defendant, unless Defendant disputes the decision in accordance with Section IX (Dispute Resolution).

(ii) If the State elects to exercise option a.(ii)(2) above, the State shall permit Defendant the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this Paragraph within ten (10) days of receipt of such notification. The State and Defendant shall have an additional thirty (30) days from the receipt by the State of the notification of objection to reach agreement. If agreement cannot be reached on any such issue

within this thirty (30) day period, the State shall provide a written statement of its decision to Defendant, which decision shall be final and binding upon Defendant, unless Defendant disputes the decision in accordance with Section IX (Dispute Resolution).

c. In the event the SEPs are not completed or performed as described in this Consent Decree, stipulated penalties shall be due and payable by Defendant to U.S. EPA and the State of Michigan in accordance with Paragraph 24, below.

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

24. Stipulated Penalties. The Defendant shall be liable for Stipulated Penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure) and subject to the dispute resolution provisions of Section IX (Dispute Resolution). For the LSWP SEP, where stipulated penalties are due to both the United States and the State, 50% of the total amount due shall be paid to the United States and 50% to the State. Where stipulated penalties are due to the State alone, 100% of the total amount shall be paid to the State.

a. 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 SEPs described in Paragraphs 13 and 14, 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 13, above, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

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

(ii) For failure to use an LSWP Worker for any window replacement performed by Defendant or on behalf of Defendant by any of its contractors in Target Housing or Child-occupied facility, or failure to use LSWP for any window replacement performed by Defendant or on behalf of Defendant by any of its contractors in Target Housing or a Child-occupied facility, or failure to provide information requested by MDCH under Paragraph 14.c., above, Defendant shall pay a total stipulated penalty in the amount of \$300 for each violation of a requirement in Attachment B per day.

(iii) For failure to submit a SEP Completion Report required by Paragraph 17, above, Defendant shall pay a

total stipulated penalty in the amount of \$900 for each day following the first day after December 31, 2011, until such SEP Completion Report is submitted.

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

b. Defendant shall pay stipulated penalties within thirty (30) days of receipt of written demand by U.S. EPA and/or the State of Michigan for such penalties, unless the Defendant initiates dispute resolution in accordance with Section IX (Dispute Resolution). The method of payment shall be in accordance with the provisions of Paragraph 9, above. Interest and late charges shall be paid as stated in Paragraph 42 herein.

25. 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).

26. Stipulated Penalties shall continue to accrue as provided in Paragraph 24, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement of the United States and Defendant, or by agreement of the State and Defendant in the case of the State SEP, or by a U.S. EPA or State decision that is not appealed to the Court, the Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and/or the State within thirty (30) days of the effective date of the agreement or the receipt of U.S. EPA's or the State's determination;

b. If the dispute is appealed to the Court and the United States and/or the State prevail 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 c., below;

c. 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.

d. 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 28 U.S.C. § 1961, accruing from the date payment became due until full payment is made.

27. The Defendant shall pay stipulated penalties due under this Consent Decree to the United States by Fed Wire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Lockbox Bank, in accordance with specific instructions to be provided to the Defendant by the United States Attorney's Office, Financial Litigation Unit, and shall reference DOJ Case No. 90-5-1-1-08899 and the Civil Action Number assigned to this case by the United States District Court, Eastern District of Michigan. The costs of such electronic funds transfer shall be the responsibility of the Defendant. A transmittal letter shall accompany each payment that indicates that the payment is for stipulated penalties, states the basis for the payment of stipulated

penalties, and references the case name and civil action number, DOJ Case No. 90-5-1-1-08899, and the name and address of the party making payment. The Defendant shall send simultaneous notices of such electronic funds transfer to the United States and U.S. EPA at the addresses set forth in Section XIII (Notice).

28. The Defendant shall pay stipulated penalties due under this Consent Decree to the State by check payable to the "State of Michigan" as set forth in Paragraph 9.b., above. A transmittal letter shall accompany each payment that indicates that the payment is for stipulated penalties, states the basis for the payment of stipulated penalties, and references the case name and civil action number, and the name and address of the party making payment. The Defendant shall send simultaneous notices of such payments, including copies of the check to the State at the addresses set forth in Section XIII (Notice).

29. Subject to the provisions of Paragraph 47 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 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.

VIII. 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 XIII 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. Except for matters related to the State SEP as set forth in Attachment A, if the United States, after consultation with the State, agrees that Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of due diligence, 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. In such circumstances, the appropriate modification shall be made pursuant to Paragraph 52 of this Consent Decree, where the modification is to a term of this Consent Decree. In the event the Parties cannot agree, the matter shall be resolved in accordance with Section IX of this Consent Decree (Dispute Resolution). 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 Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of due diligence, 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. In such circumstances, the appropriate modification shall be made pursuant to Paragraph 52 of this Consent Decree, where the modification is to a term of this Consent Decree. In the event the Parties cannot agree, the matter shall be resolved in accordance with Section IX of this Consent Decree (Dispute Resolution). 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.

IX. 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 XIII 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 XIII 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 XIII 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 XIII 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.d.(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 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.d.(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 25, above. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (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 25, above. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

X. 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.

XI. LATE PAYMENT OF CIVIL OR STIPULATED PENALTY

42. If Defendant fails to make timely payment of the civil or stipulated penalties due under this Consent Decree,

Defendant shall be liable for Interest 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.

XII. 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.

XIII. NOTICE

45. 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.

46. 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
United States 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 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604

State of Michigan Attorney General's Office:

Ronald J. Styka, Assistant Attorney General
Division Chief, Community Health Division
Michigan Department of Attorney General
G. Mennen Williams Building, 7th 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, 4th Floor
P.O. Box 30195
Lansing, MI 48909

Defendant:

Stanford Blanck
Wallside, Inc.
27000 Trolley Industrial Drive
Taylor, MI 48180

with a copy to:

Kenneth C. Gold, Esq.
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
Detroit, MI 48226

XIV. GENERAL PROVISIONS

47. This Consent Decree resolves only the civil claims of the United States and the State for the violations specifically alleged in the Complaints 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.

48. 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.

49. 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.

50. 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.

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

52. Any material modification of this Consent Decree 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 Attachments A and B may be made by written approval of the Plaintiffs and the Defendant.

XV. RETENTION OF JURISDICTION

53. 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 of execution.

XVI. TERMINATION

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

- a. Defendant has completed all Work required by this Consent Decree;
- b. 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;

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

d. 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.

XVII. PUBLIC COMMENT

55. 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.

XVIII. SIGNATORIES

56. Each undersigned representative of Defendant, the Assistant Attorney General for Environment and Natural Resources 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.

57. 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.

58. 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 _____, 2009.

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. Wallside, Inc.,
Civil Action No.:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

Date 6/10/09

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

TERRENCE BERG
United States Attorney

Date 6/16/09

CAROLYN BELL HARBIN
Assistant U.S. Attorney
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9114
Carolyn.Bell-Harbin@usdoj.gov
(P27350)

United States of America and State of Michigan v. Wallside, Inc.

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

Date 1/8/09

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

Date 1/15/09

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

Date 12/29/08

United States of America and State of Michigan v. Wallside,
Inc.

FOR WALLSIDE, INC.: **IN**

By: _____

Stanford B. Blanck
Vice President, Wallside, Inc.

Date

Dec. 19 2008

ATTACHMENT A

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 13 of the Consent Decree, Defendant shall provide windows with a retail value of three hundred and fifty thousand dollars (\$350,000) to MDCH for installation in target housing for completion of the Windows SEP. The Windows SEP shall be completed within forty-two months of the date of entry of this Consent Decree. Defendant shall detail the progress made in the Periodic and Final SEP Reports required in Paragraphs 16 and 17 of the Consent Decree.

Defendant shall conduct the Windows SEP in accordance with the following schedule, which shall commence with the start of the first calendar year quarter following the entry of the Consent Decree:

ACTIVITY	DATE
1. MDCH will give the Defendant an estimate of the number of windows required for each calendar quarter. MDCH’s estimates will be based on the anticipated number of projects homes scheduled for completion.	First week of each calendar year quarter
2. MDCH contractors shall use the Defendant’s existing ordering forms and system for satisfying the conditions of the Windows SEP. The Defendant shall prioritize the manufacturing of windows ordered by MDCH in the same manner as the manufacturing of windows ordered by Defendant’s customers. 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 necessary for that job and any other specification identified by the Defendant to fulfill the order.	Ongoing

<p>Among other things, each order shall indicate that the ordering person is the MDCH and shall also indicate the homeowner's name, address and in-structure location (e.g., room and directional orientation) of all windows. The Parties expect that most orders shall be for 60-70 windows every 6-8 weeks to be installed within 75 miles of Defendant's manufacturing facility. Defendant shall provide a "ready date" for completing the manufacture of the windows ordered by MDCH at the time that MDCH submits an order to Defendant. During the term of this Windows SEP, the "ready date" shall be 15 Working Days from the order date for at least 75% of the windows and no later than 20 Working Days from the order date for the balance of the windows, provided that the calculation of the 75%/25% ratio shall exclude orders for: (a) an aggregate of 100-200 windows placed within any four-week period; and (b) windows not typically manufactured by Defendant (although a 20 Working Day ready date still applies to windows described in (a) and (b), provided that orders for an aggregate of more than 200 windows shall not be placed in any four-week period. Defendant shall make windows available for pick up by MDCH's installers at Defendant's Taylor, Michigan manufacturing facility by the "ready date". In some instances where windows need to be replaced on an expedited basis, the Defendant shall manufacture windows identified by MDCH as "rush orders" on a more accelerated schedule than normal. "Rush orders" shall have a "ready date" no more than 7 Working Days from the order date, except that rush orders for more than 15 windows shall have a "ready date" as agreed between the parties. Defendant may be requested to provide delivery of rush or regular orders in certain instances. The radius for delivering windows shall not exceed 160 miles, and the majority of such deliveries will be within 75 miles of Defendant's Taylor, Michigan manufacturing facility. Reasonable costs for delivery will be subtracted from the balance of the retail window value still owed. For purposes of this Windows SEP, "Working Day" shall not include: (1) December 25 – January 1 of any year; and (2) the 28-day period during the first quarter of 2009 to be identified by Defendant during which Defendant plans to shut down and re-tool its manufacturing facility, for which Defendant will provide written notice at least 14 days in advance of such shutdown to MDCH in accordance with Section XIII of the Consent Decree.</p>	
<p>3. 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 20 Working Days of Activity #2.</p>

Changes to the requirements listed in the preceding Table may be considered non-material modifications under Paragraph 50 of the Consent Decree, provided Defendant (1) achieves the requirement to provide windows with a retail value of \$350,000 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 U.S. EPA and MDCH as provided in Paragraph 50 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 Taylor, Michigan manufacturing facility at a "ready date" identified and committed to by Defendant, but no later than 20 Working Days after MDCH's order, as set forth in the Table, above.

Defendant will supply MDCH with windows that meet MDCH's minimum specifications, existing as of November 1, 2007 (notwithstanding any subsequent revisions thereto), including Energy-Star rating standards, provided that Defendant's windows may have: (1) screens made of fiberglass instead of aluminum; and (2) a pocket sill instead of a sloped sill.

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 for a period of no less than 10 years on parts and labor, and an

additional 10 years on parts, and that shall provide for a Service Program that will address any window manufacturing defects identified after window installation. This Service Program shall ensure that a manufacturer's representative will contact the homeowner and go to the home within ten (10) Working Days of being contacted by MDCH to identify the MDCH-identified defective window(s), and will timely correct the defect. The warranty shall not be required to warrant the contractor's installation work or problems caused thereby. The warranty may be delivered by providing it to the MDCH contractor at the time of window pick-up or delivery. Notwithstanding anything else herein, Defendant's Service Program and warranty shall not apply to windows installed at locations more than 160 miles from Defendant's manufacturing facility in Taylor, Michigan.

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

a. For purposes of this Windows SEP, a standard, white double hung and double slider window (series 2000 or its equivalent) up to 100 united inches (UI) using low-E glass and other materials typically used by Defendant shall have a value of \$198.00. The following values in addition to the \$198.00 shall apply to windows other than standard:

- i. Oversize windows: \$3.19 per UI over 100 UI
- ii. Tempered glass: \$15.20 per lite; \$80.73 per lite if over 100 UI
- iii. Muntins: \$7.43 per lite
- iv. Almond: 5% premium
- v. Terratone: 20% premium
- vi. Hoppers: \$166.21 each
- vii. End vent/center vents:
 - Up to 100 UI: \$232.71
 - 101 to 135 UI: \$2.93 per UI
 - 136 to 150 UI: \$3.37 per UI
 - 151 to 170 UI: \$4.27 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
- b. Rush orders shall be subject to a 10% premium over the value otherwise attributable to the windows.

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):

Mr. Dave Ball
Wallside, Inc.
27000 Trolley Industrial Drive
Taylor, MI 48180
Telephone: 313-292-4400
Fax: 313-292-0901
Email: dball@wallside.com

Alternative liaison:
Mr. Mark Trombley
(same contact information as above except email)

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 manufacturing facility 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 U.S. EPA and the State of Michigan, on the one hand, and the Defendant, on the other hand, 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 IX (Dispute Resolution) of the Consent Decree.

ATTACHMENT B

ATTACHMENT B
Lead-Safe Work Practices

Lead-based paint (LBP) may be present in any housing or child-occupied facilities built before 1978. Since it is not possible to identify LBP without analysis, you should assume that window components in pre-1978 housing or child-occupied facilities are coated with lead-based paint, and treat them accordingly.

Standard Operating Procedures

The following procedures should be used to minimize the generation of lead-containing dust, and collect lead-containing debris during your work. Whenever using polyethylene sheeting (poly), use at least 4 mil poly. As an alternative to poly, you may use another impermeable material ("alternate material") equivalent to 4 mil poly under the following circumstances: provide a sample of the alternate material to MDCH at least 14 days in advance of use, together with evidence of its equivalence; if MDCH determines that the alternate material is not equivalent to 4 mil poly, then the MDCH may cite Wallside for violation of the Consent Decree for its continued use, subject to the Dispute Resolution procedures in Section IX of the Consent Decree.

Step 1 Before any work is done on window unit(s) you should:

- Restrict access to prevent children from entering the work area by designating the work area with caution tape and/or signs, and/or erecting plastic sheeting barriers. For purposes of this Attachment B, "work area" is the area established by Wallside on a per project basis necessary to contain dust and debris generated by the work.
- For interior window replacement:
- Move readily movable* furniture, rugs, curtains, clothing, toys, food and all other items (both interior and exterior) at least five (5) feet beyond the perimeter of the window being replaced to accommodate poly sheeting. Items within five (5) feet of the perimeter of the window that are not moved must be covered with impermeable disposable drop cloths or poly sheeting, with all seams and edges taped or otherwise sealed.
- Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

* "Readily movable" means an item that can be easily moved by an average worker without the need to use equipment to do so and without the need to disassemble or remove items from cabinets, chests, closets, dressers, shelves, or other fixtures, appliances, or furniture.

- Close all doors, windows, and other openings of the work area.
- Place poly on the floor of the room immediately beneath the window(s) to be replaced, extending at least five (5) feet in each direction from the perimeter of the window (unless lesser distances are required due to obstructions such as heavy furniture or structural components). Secure the poly to the floor and wall using painter's tape.
- Mist the interior surfaces of all window components being removed using amended water from a spray bottle or garden-type sprayer. A wetting agent should be added to the water such as tri-sodium phosphate (TSP) or a liquid dishwashing soap. Repeat the spray as often as necessary to keep lead-contaminated dust to a minimum.
- For exterior window replacement:
 - Place poly on the ground immediately outside the window(s) to be replaced, and secure. The poly must extend 10 feet beyond the perimeter of the window being replaced unless the property line prevents such ground covering. If special considerations exist (safety, landscaping or customer requests), position the poly so that the considerations are satisfied. During rain events, or when there is snow cover or ice cover, where poly may create a worker hazard, you may use, at a minimum, a 1 ½ to 2 foot wide catch strip of poly, maintained from the foundation during exterior work, followed by a very thorough cleanup to remove all visible dust and debris. You may cut out holes in poly for ladder legs, as appropriate. DO NOT USE CANVAS DROP CLOTHS.
 - Mist the interior and exterior surfaces of all window components being removed using amended water from a spray bottle or garden-type sprayer. A wetting agent should be added to the water such as tri-sodium phosphate (TSP) or a liquid dishwashing soap. Repeat the spray as often as necessary to keep lead-contaminated dust to a minimum.
 - You may use either of the following options:
 - Option (1):
 - Secure a sheet of poly to the interior side of the window by taping it to the outside edges of the window casing. If you chose this option, HEPA-vacuum the horizontal crease where the sill or sill area meets the poly covering the window.

Option (2):

- Move readily movable* furniture, rugs, curtains, clothing, toys, food and all other items (both interior and exterior) at least five (5) feet beyond the perimeter of the window being replaced to accommodate poly sheeting. Items within five (5) feet of the perimeter of the window that are not moved must be covered with impermeable disposable drop cloths or poly sheeting, with all seams and edges taped or otherwise sealed.
- Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.
- Close all doors, windows, and other openings of the work area.
- Place poly on the floor of the room immediately beneath the window(s) to be replaced, extending at least five (5) feet in each direction from the perimeter of the window (unless lesser distances are required due to obstructions such as heavy furniture or structural components), and secure the poly to the floor and wall using painter's tape.

Step 2 Carefully remove all trim and window components which are to be demolished. Using a sharp knife or razor blade, score the painted seams of all painted components so as to prevent excessive peeling and chipping. To the extent possible, window components should be pried or pulled apart, instead of breaking or smashing. **The use of certain work practices such as heat guns, open-flame burning, machine grinding and sanding is restricted as per the protocols provided in the State of Michigan Lead Hazard Control Rules, rule 406 paragraph 7.**

Step 3 Pick up all demolished window components, and wrap in poly and contain with duct tape. Architectural components (i.e., windows) are exempt from hazardous waste regulations; however, they must be wrapped in poly and contain with duct tape before disposal in a regular dumpster/landfill or other disposition. Unpainted metal or vinyl components, however, do not need to be wrapped. **DO NOT REUSE POLY OR DROP CLOTHS USED AT A PREVIOUS WORKSITE.**

Step 4 Vacuum the entire window opening with a HEPA vacuum cleaner that meets ANSI Z9.2 standards and OSHA and EPA regulations, as approved by MDCH. GD930 model (marketed under the names "Nilfisk" and "Euroclean"), is approved by MDCH for

* Same definition as above.

HEPA-vacuum work. Wipe down the components which remain with damp disposable cleaning materials, and HEPA-vacuum the entire window opening again.

Step 5 After the new product is installed and trimmed out, perform the following specialized cleaning procedures:

- Mist the poly sheeting before folding
- Roll up poly materials folding inward, and clean up any debris which may have fallen during installation
- Remove heat/AC vent coverings/tape
- HEPA-vacuum all interior surfaces within the work area
- Wipe down all surfaces in the work area with damp disposable cloths and/or mop
- Re-vacuum the work area with a HEPA vacuum

Step 6 Inspect the work area for visible dust and/or debris.
Repeat Step #5 if necessary.

Step 7 If the homeowner/resident refuses to allow any of the above required actions, advise the homeowner/resident of the EPA requirement for “lead safe work practices” and the potential for contamination. If they still request some procedures not be followed, describe those procedures on, and have the homeowner/resident sign the separate “homeowner acknowledgement” form. If the homeowner/resident refuses to sign the homeowner acknowledgement form, the project supervisor must sign it where indicated. Retain the signed homeowner acknowledgement form for inclusion in the project folder.

Homeowner Acknowledgement

By signing below, the homeowner/resident acknowledges that this renovation project may produce lead-containing dust. Lead-containing dust can be hazardous to you and your family. Certain lead safe work practices specified by the U.S. Environmental Protection Agency (EPA) are intended to prevent the generation of lead-containing dust during work. By signing below, you acknowledge that you have requested that some of the EPA specified work not be followed as indicated below:

Homeowner Signature

Date

Supervisor Signature

Date

Supervisor Certification If Homeowner Could Not or Refuses to Sign

If the homeowner/resident refuses to allow some or all specified lead safe work practices, but cannot or will not sign this document, the supervisor must sign the following certification, and retain this document for inclusion in the project folder:

I certify that I spoke with the homeowner/resident, described the lead-safe work practices to him or her, and explained that the purpose of the lead safe work practices is to prevent the production during work of lead-containing dust that can be hazardous. If the homeowner/resident was present, I provided him or her a copy of the lead-safe work practices document. The homeowner/resident still refused to allow lead-safe work practices, and could not or refused to sign this homeowner acknowledgement form.

Supervisor Signature

Date