

ENVIROMATE, LLC and PHILIP A.
GEDDES, individually and as the
managing member of the corporation,

Defendants.

STIPULATED JUDGMENT AND ORDER
FOR INJUNCTION AND OTHER RELIEF

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendants Enviromate, LLC (“Enviromate”) and Philip A. Geddes (“Geddes”) (collectively “Defendants”) have waived service of the Summons and Complaint; Defendants have been represented by the attorney whose name appears hereafter; and Defendants have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law;

THEREFORE, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

- 1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Northern District of Alabama is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

4. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claims that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear its own costs and attorneys' fees.
6. Entry of this Order is in the public interest.

DEFINITIONS

1. "Competent and reliable scientific evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. "Corporate Defendant" means Enviromate, LLC, and its successors and assigns.
3. "Covered Product or Service" means any home insulation, any component thereof or additive thereto, and any product or any service for which Defendants make any claim about the R-value, K-value, thermal performance, energy costs, energy savings, energy consumption, insulation qualities, or energy-related efficacy.
4. "Defendants" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

8. "K-value" is a measure of a material's thermal conductivity.
Case 5:09-cv-00386-CLS Document 2 Filed 03/02/2009 Page 3 of 15
9. "R-value" is a measure of a material's resistance to heat flow.

I. PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, their officers, agents, servants, and employees, and attorneys; and all persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, marketing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, are hereby permanently restrained and enjoined from making or assisting others in making any representation, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, about the R-value, K-value, thermal performance, energy costs, energy savings, energy consumption, insulation qualities, or energy-related efficacy of such product or service, unless:

- (A) The representation is true and not misleading; and
- (B) At the time the representation is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II. PROHIBITION ON VIOLATING THE R-VALUE RULE

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys; and all persons and entities in active concert or participation with them

enjoined from failing to comply with any provision of the Commission's Trade Regulation Rule
Case 5:09-cv-00386-CLS Document 2 Filed 03/02/2009 Page 4 of 15
Concerning the Labeling and Advertising of Home Insulation (16 C.F.R. Part 460) ("R-value
Rule" or the "Rule"), a copy of which is attached hereto as "Appendix A," or of the Rule as it
may hereafter be amended, including but not limited to:

- (A) Failing to base R-value claims only on tests conducted under American Society of Testing and Materials ("ASTM") methods, as required by 16 C.F.R. § 460.5;
- (B) Failing to base R-value claims only on tests done either at the thickness specified or at a representative thickness, in accordance with the requirements listed in 16 C.F.R. § 460.6;
- (C) Selling insulation where the actual R-value of that insulation is more than 10% below the R-value shown in the label, fact sheet, ad, or other promotional material for that insulation, in accordance with 16 C.F.R. § 460.8;
- (D) Making R-value claims without making the mandatory advertising disclosures, including the thickness needed to obtain specified R-values, as required by 16 C.F.R. § 460.18(a);
- (E) Making "R-value per inch" claims without ensuring that actual test results prove that the R-values per inch of the product do not drop as the product gets thicker, in accordance with 16 C.F.R. § 460.20; and

the Commission and appear or cause their officers, employees, representatives, or agents to appear at such places and times as the Plaintiff or the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Plaintiff or the Commission. If requested in writing by the Plaintiff or the Commission, Defendants shall appear or cause their officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

IV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- (A) Within ten (10) days of receipt of written notice from a representative of Plaintiff or the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

employees, or any other entity managed or controlled in whole or in part by any of the Defendants, without the necessity of identification or prior notice; and

- (C) Defendants each shall permit representatives of Plaintiff and the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- (A) For a period of three (3) years from the date of entry of this Order,
- (1) Each Individual Defendant shall notify the Commission of the following:

change. Such notice shall include the name and address of each
business that such Defendant is affiliated with, employed by,
creates or forms, or performs services for; a detailed description of
the nature of the business; and a detailed description of such
Defendant's duties and responsibilities in connection with the
business or employment; and

- (c) Any changes in such Defendant's name or use of any aliases or
fictitious names;
- (2) Defendants shall notify the Commission of any changes in structure of any
Corporate Defendant or any business entity that any Defendant directly or
indirectly controls, or has an ownership interest in, that may affect
compliance obligations arising under this Order, including but not limited
to: incorporation or other organization; a dissolution, assignment, sale,
merger, or other action; the creation or dissolution of a subsidiary, parent,
or affiliate that engages in any acts or practices subject to this Order; or a
change in the business name or address, at least thirty (30) days prior to

report to the FTC, which is true and accurate and sworn to under penalty of
perjury, setting forth in detail the manner and form in which they have complied
and are complying with this Order. This report shall include, but not be limited
to:

- (1) For each Individual Defendant:
 - (a) such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - (b) such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - (c) Any other changes required to be reported under Subsection A of this Section.

(C) Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

(D) For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue, N.W.
Suite NJ-2122
Washington, D.C. 20580

Re: **FTC v. Enviromate, LLC, et al.**, Civil Action No. _____.

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at:

DEBrief@ftc.gov.

(E) For purposes of the compliance reporting and monitoring required by this Order, Plaintiff and the Commission are authorized to communicate directly with each Defendant.

are hereby restrained and enjoined from failing to create and to retain the following records:

- (A) All advertisements, sales scripts, training materials, or other marketing materials containing any representation subject to this Order, together with:
 - (1) All materials that were relied upon in disseminating the representation;
and
 - (2) All tests, reports, studies, surveys, demonstrations, or other evidence in Defendants' possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- (B) Copies of all labels and fact sheets for home insulation;
- (C) Accounting records that reflect the cost of any covered product or service sold, revenues generated, and the disbursement of such revenues;
- (D) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the

- (F) Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- (G) All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

VII. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- (A) **Corporate Defendants:** Each Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, representatives, and distributors who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance

Compliance Reporting, delivery shall be at least ten (10) days prior to the change in structure.

(B) **Individual Defendant as Control Person:** For any business that any Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, other than a business that both (a) is controlled by such Defendant solely in his capacity as the trustee of a bankruptcy estate and (b) does not engage in conduct related to the subject matter of the Order, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon the Individual Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

(D) Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

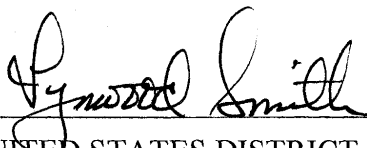
VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

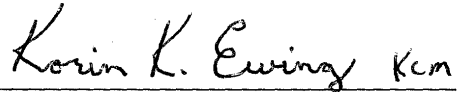
IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

IX. RETENTION OF JURISDICTION

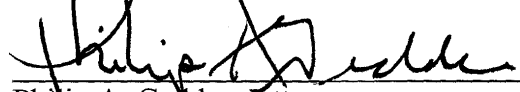
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

IT IS SO ORDERED, this 2nd day of March, 2009.


UNITED STATES DISTRICT JUDGE

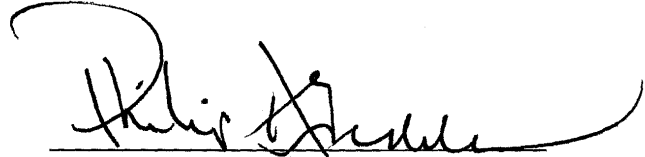

Korin K. Ewing Kcm

KORIN K. EWING, Attorney
Federal Trade Commission
Division of Enforcement
601 New Jersey Avenue, N.W.
Suite NJ-2122
Washington, D.C. 20001
202-326-3556, kewing@ftc.gov
202-326-2558 (fax)


Philip A. Geddes

Philip A. Geddes, Attorney
255 Grant Street, SE
2nd Floor
Decatur, Alabama 35601

256-350-6054, geddes65@hiwaay.net
256-350-1812 (fax)


Philip A. Geddes

Philip A. Geddes, individually and as
Member of Enviromate, LLC

