

IN THE MATTER OF

MCCOY INDUSTRIES, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3211. Complaint, April 2, 1987—Decision, April 2, 1987

This consent order prohibits, among other things, the Greensboro, N.C.-based retailer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

Appearances

For the Commission: *Charles Peterson and Truett M. Honeycutt.*

For the respondents: *Richard Vandore, Greensboro, N.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Reliance Wood Preserving, Inc., a corporation, McCoy Industries, Inc., a corporation, Reliance Treated Wood, Inc., a corporation, and Daniel Roy Dorman, individually and as an officer of Reliance Wood Preserving, Inc., ("respondents") have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Reliance Wood Preserving, Inc. (Reliance), is a Maryland corporation with its office and principal place of business located in the Federalsburg Industrial Park, P.O. Box 349, Federalsburg, Maryland 21632. Respondent Reliance manufactures, advertises, and sells fire retardant treated wood (FRTW).

(b) Respondent Daniel Roy Dorman (Dorman) resides in the State of Maryland. He is president of respondent Reliance; he directs, controls, formulates, or participates in the acts and practices of respondent Reliance.

(c) Respondent Reliance Treated Wood, Inc. (Treated Wood), is a North Carolina corporation with its office located at 300 East Wenderover Avenue, Greensboro, North Carolina 27420 and its principal place of business located at Federalsburg Office Park, Federalsburg, Maryland. Respondent Treated Wood advertises and sells FRTW.

(d) Respondent McCoy Industries, Inc. (McCoy), is a North Carolina

corporation with its office and principal place of business located at 300 East Wendover Avenue, Greensboro, North Carolina 27420. McCoy owns 100% of the outstanding stock of respondent Treated Wood.

DEFINITIONS

PAR. 2. For the purposes of this complaint, the following definitions apply:

a. "ASTM E 84" is a test recognized in the lumber industry as a measure of the fire retardancy of wood based on the rate of flame spread.

b. An "ASTM E 84 flame spread index" (flame spread index) of 25 or less is the score that most, if not all, building codes require a wood product to obtain in order to be used in certain applications where FRTW is required.

c. "Fire Retardant Treated Wood" or "FRTW" is wood that has an ASTM flame spread index of 25 or less and is chemically treated under pressure with fire retardant chemicals.

d. "Respondents' FRTW" means wood that Reliance has represented or Treated Wood has advertised as being fire retardant or class "A" or having a flame spread of 25 or less.

e. A "class 'A' rating" means that FRTW possesses a flame spread index of 25 or less.

f. "Flameguard" is a brand name that respondents use for their FRTW.

g. "Underwriters Laboratories" (UL) is a laboratory that, among other things, tests the fire retardancy of wood and performs quality control inspections of FRTW.

h. "The American Wood Preservers Bureau" is an industry association concerned with the quality of wood.

i. "Timber Products Inspection" is a quality control agency that, among other things, attests to the fact that wood is fire retardant.

PAR. 3: The acts and practices of respondents alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I

PAR. 4: The allegations contained in paragraphs one through three are incorporated herein by reference.

PAR. 5: Respondents Reliance and Dorman have placed labels on respondents' FRTW that read as follows:

- a. FLAMEGUARD
ASTM-E 84 25 OR LESS
MEA 140-83 M
Exterior
- b. 83 FLAMEGUARD 84
Fire Retardant Treated Wood
ASTM-E 84 25 OR LESS
Reliance Wood Preserving, Inc.,
Federalsburg, Maryland
Quality assured by Timber Products Inspection

PAR. 6: Through the use of the labels on respondents' FRTW described in paragraph five above, respondents Reliance and Dorman have made the following material representations, directly or by implication:

(1) Respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, has a flame spread index of 25 or less as measured by the ASTM E 84 test.

(2) Respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, is quality assured or otherwise approved by Timber Products Inspection.

PAR. 7: In truth and in fact:

(1) At least some of respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, which was sold prior to April 15, 1985, does not have a flame spread index of 25 or less.

(2) At least some of respondents' FRTW bearing the labels placed on it by respondents Reliance and Dorman, as described in paragraph five above, which was sold prior to April 15, 1985, is not quality assured or otherwise approved by Timber Products Inspection. Therefore, the representations set forth in paragraph six were and are false and misleading.

COUNT II

PAR. 8: The allegations contained in paragraphs one through three are incorporated herein by reference.

PAR. 9: Respondent Treated Wood advertises FRTW through promotional flyers and brochures. In such advertisements, Treated Wood has made various statements, prior to April 15, 1985, concerning the

fire retardant properties and the quality classifications, approvals, or certifications of respondents' FRTW. Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the promotional flyer attached hereto as Exhibit A:

- a. "Flameguard has a low flame spread index of 25 or less";
 - b. "Flameguard is UL classified";
 - c. "All tests have been conducted and certified by the TPI Agency, Conyers, Georgia";
- and
- d. "All lumber and plywood to be fire-retardant treated will be pressure treated with Reliance Flameguard to comply with the requirements of a flame spread rating of 25 or less when tested for a period of not less than 30 minutes without evidence of significant progressive combustion in accordance with the standard test method for surface burning characteristics of building materials (ASTM-E 84 . . .)"

PAR. 10. Typical and illustrative of the statements made by Treated Wood, prior to April 15, 1985, concerning respondents' FRTW, but not all-inclusive thereof, are the following from the promotional flyer attached hereto as Exhibit B:

- a. "Flameguard Underwriters Laboratories tested and certified";
- b. "Fire retardant";
- c. "Class 'A' rating";
- d. A depiction of Timber Products Inspection's logo; and
- e. A depiction of the American Wood Preservers Bureau's logo.

PAR. 11: Through the use of the statements contained in paragraphs nine and ten above and other statements not specifically set forth herein, Treated Wood has made the following material representations, directly or by implication:

- (1) Respondents' FRTW has a flame spread index of 25 or less.
- (2) Respondents' FRTW possesses a class "A" rating.
- (3) UL classifies or otherwise approves respondents' FRTW.
- (4) Timber Products Inspection assures the quality of or otherwise approves respondents' FRTW.
- (5) American Wood Preservers Bureau approves or certifies respondents' FRTW for fire retardancy.

PAR. 12: In truth and in fact:

- (1) At least some of respondents' FRTW, which was sold prior to April 15, 1985, has a flame spread index higher than 25.
- (2) At least some of respondent's FRTW, which was sold prior to April 15, 1985, does not possess a class 'A' rating.
- (3) UL has not classified or otherwise approved respondents' FRTW.

(4) At least some of respondents' FRTW, which was sold prior to April 15, 1985, is not quality assured or otherwise approved by Timber Products Inspection.

(5) American Wood Preservers Bureau has not approved or certified respondents' FRTW for fire retardancy. Therefore, the representations set forth in paragraph eleven were and are false and misleading.

PAR. 13: The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act.

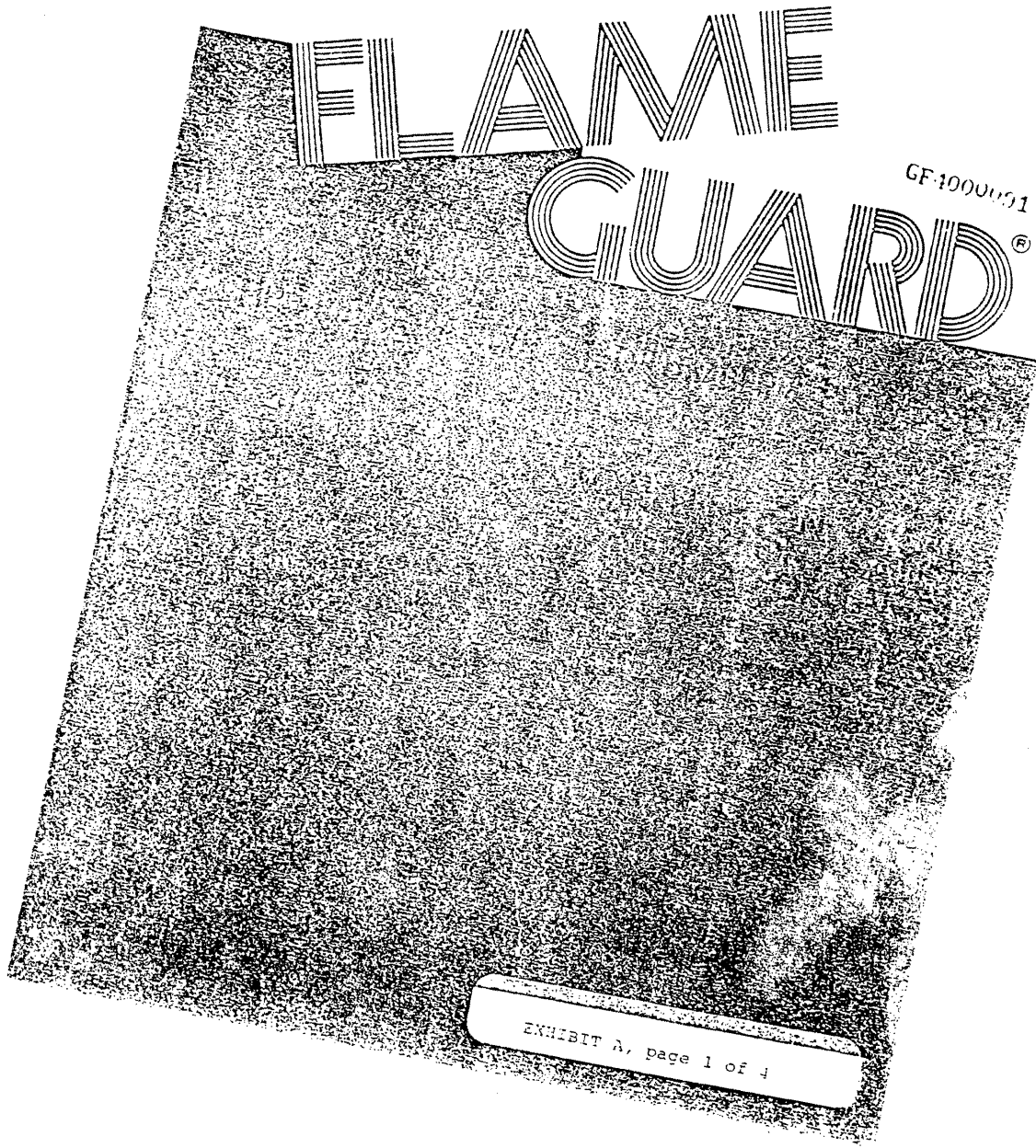
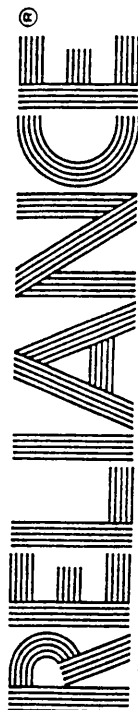


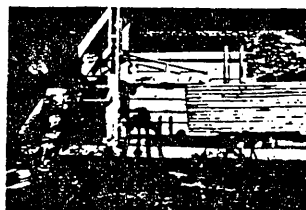
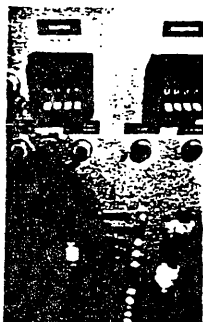
EXHIBIT A, page 1 of 4



FLAMEGUARD® FIRE-RETARDANT TREATED WOOD HAS MANY USES.

FLAMEGUARD® pressure-treated wood products can be used both for interior or exterior construction where safety from fire is mandatory. Flameguard fire-retardant wood is ideal for roof and floor trusses, beams, roofdecks, trim, loadbearing and non-bearing partitions, steps, stairways, ladders, scaffolding, siding, framing, balconies, walkways and facades or any other application that requires fire-resistant and noncombustible building materials.

As Flameguard treated wood remains clear and will not develop the unsightly surface bloom common with many other fire retardant treatments, Flameguard products are particularly suited to architectural millwork, moldings, and paneling.



ADVANTAGES

FLAMEGUARD is a special formulation of fire retardant chemicals pressure impregnated for maximum wood penetration and protection.

FLAMEGUARD has a low flame spread rating of 25 or less and generates low smoke levels. Its self-extinguishing characteristic eliminates wood so treated as a source of fuel thereby limiting the spread of fire.

FLAMEGUARD fire-retardant treated wood retains its strength under fire conditions longer than untreated wood and many other building materials including steel.

FLAMEGUARD has a very low hygroscopicity and does not absorb and retain moisture even in high humidities. Use in humidities up to 95% is recommended.

FLAMEGUARD is compatible with metal fasteners. Unlike the sulphate and chloride contained in many fire-retardant treatments, the chemicals in our process are non-corrosive.

FLAMEGUARD is a clear fire-retardant treatment which causes little, if any, change in the original color of the wood. Unlike wood treated with many fire-retardant processes, Flameguard products are free of chemical deposits and have no unsightly residue to mar the surface of the wood.

GF-1000092

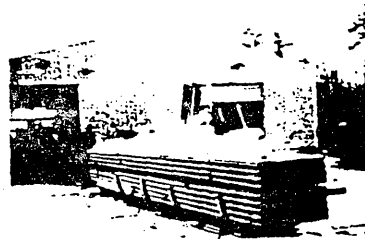
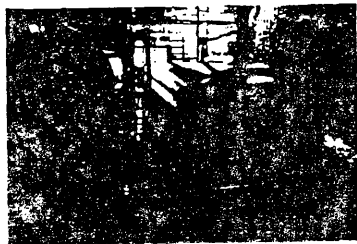
FLAMEGUARD is non-blooming even in extremely humid conditions. Like untreated wood, Flameguard treated wood will weather naturally.

FLAMEGUARD treated wood does not require sealing. The surface of the treated wood will remain clean and can be left unfinished, stained or painted with oil based products.

FLAMEGUARD fire-retardant treated wood qualifies for lower insurance rates with major rating organizations. In many states buildings constructed with fire-retardant treated lumber is granted the same rating as masonry construction and is classified similar to noncombustible material. Shingles treated with Fireguard carry a B rating without foil being placed under them.

FLAMEGUARD is halogen free and is acceptable for construction of nuclear power plants. Free formaldehyde is not given off by Flameguard treated wood.

FLAMEGUARD treated wood, although not marketed as preservative-treated products, does give protection from decay since the wood is sealed and the chemicals are toxic to insects.



FLAMEGUARD is injected through a pressure treatment that forces the fire-retardant chemicals into wood without injuring the wood fibers. The process is operated on a time-pressure schedule that equalizes the natural differences present in lumber and plywood.

FLAMEGUARD reduces the splitting and checking characteristics of untreated wood.

FLAMEGUARD treated wood is readily available with substantial inventories of treated wood products and an abundant supply of raw materials.

SPECIFICATIONS

All lumber and plywood to be fire-retardant treated will be pressure treated with Reliance[®] Flameguard[®] to comply with the requirements of a flame spread rating of 25 or less when tested for a period of not less than 30 minutes without evidence of significant progressive combustion in accordance with the standard test method for surface burning characteristics of building materials.

Each treated product will be tested and will bear the performance identification label assuring its compliance with the standards of the American Wood Preservers Association.

Shingles and shakes will be fire-retardant pressure treated to meet the requirements for a Class B or Class C covering in accordance with the Standard Test, ASTM E-108 Test for Roof Covering Materials.

STANDARDS AND APPROVALS

Flameguard® meets the requirements of the following specifying agencies:
Federal Specification MIL-L-19140C;
Building Officials and Code Administrators International;
International Conference of Building Officials; Southern Building Code Congress International, Inc.; National Fire Protection Association, Inc.; American Wood Preservers Association; National Building Code, Insurance Services Office, Nuclear Energy Liability Property Insurance Association and many other local, county and state building codes, insurance underwriters and rating bureaus.

All tests have been conducted and certified by The T.P.I. Agency, Conyers, Georgia.

Flameguard is U.L. Classified (U.L. 723).

Flameguard® treated lumber and plywood is a product of Reliance® Treated Wood. For additional information or to place orders contact one of our offices:

RELIANCE
TREATED WOOD

P.O. Box 22101
Greensboro, NC 27420
919/379-0801
Outside North Carolina 800/334-9113

P.O. Box 400
Federalsburg, MD 21632
301/754-5711

P.O. Box 203
Newtown Square, PA 19073
215/353-6466

GF-100009-1

Complaint

109 F.T.C.

EXHIBIT B

RELIANCE TREATED WOOD

POST OFFICE BOX 205 • NEWTOWN SQUARE, PA 18973 • TELEPHONE (717) 252-0400

PRODUCERS OF C.C.A. PRESSURE TREATED LUMBER & PLYWOOD, INTERIOR
& EXTERIOR FIRE RETARDANT LUMBER & PLYWOOD OFFER THE FOLLOWING:

SHOW STOPPER SPECIAL

2 X 4 - 1 pkg./12', 1 pkg./16'

2 X 6 - 1 pkg./14'

2 X 8 - 1 pkg./12', 1 pkg./16'

4 X 4 - 1 pkg./8'

1 X 4 - 1 pkg./12'

AND YOUR CHOICE OF EITHER

3 X 5 - 1 pkg./8' OR 6 X 6 - 1 pkg./8'

THIS TRUCKLOAD OF C.C.A. 40 G'S #2 SOUTHERN YELLOW PINE CAN FIT
YOU IN THE PRESSURE TREATED LUMBER BUSINESS FOR ONLY \$4,500.00

AND A SMALL DELIVERY CHARGE TO YOUR YARD.

FLAMEGUARD

UNDERWRITERS LABORATORIES TESTED

AND CERTIFIED

Fire Retardant

EXTERIOR

CLASS "A" RATING

INTERIOR

CLAUDE SHANNON

JIM BRADY

RITCH BENNER

EXHIBIT B

BOOTH 16

TIMBER PRODUCTS INSPECTION

GC200010



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, who were represented by counsel, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents McCoy Industries, Inc., and Reliance Treated Wood, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of North Carolina., with their offices and principal places of business located at 300 East Wendover Avenue, in the City of Greensboro, State of North Carolina.

Respondent McCoy Industries, Inc. (McCoy), owns 100% of the outstanding stock of respondent Reliance Treated Wood, Inc. (Treated Wood).

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

A. "ASTM E 84" is a test recognized in the lumber industry as a

measure of the fire retardancy of wood based on the rate of flame spread.

B. An "ASTM E 84 flame spread index" (flame spread index) of 25 or less is the score that most, if not all, building codes require a wood product to obtain in order to be used in certain applications where FRTW is required.

C. "Fire Retardant Treated Wood" or "FRTW" is wood chemically treated under pressure with fire retardant chemicals and has an ASTM flame spread index of 25 or less.

D. "Treated Wood's FRTW" is wood that Treated Wood has represented as being fire retardant or Class "A" or having a flame spread of 25 or less.

E. A "class 'A' rating" means that FRTW possesses a flame spread index of 25 or less.

F. "Flameguard" is a brand name that respondent Treated Wood uses for its FRTW.

G. "Underwriters Laboratories" (UL) is a laboratory that, among other things, tests the fire retardancy of wood and performs quality control inspections of FRTW.

H. "The American Wood Preservers Bureau" is an industry association concerned with the quality of wood.

I. "Timber Products Inspection" is a quality control agency that, among other things, attests to the fact that wood is fire retardant.

I.

It is ordered, That Reliance Treated Wood, Inc., and McCoy Industries, Inc., directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertisement, offering for sale, sale, or distribution of Treated Wood's FRTW, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that:

- A. Treated Wood's FRTW is fire retardant, unless such is the fact;
- B. Treated Wood's FRTW possesses a flame spread index of 25 or less, unless such is the fact;
- C. Treated Wood's FRTW possesses a class "A" rating, unless such is the fact;
- D. Treated Wood's FRTW has specified fire retardant properties, unless such is the fact;
- E. Treated Wood's FRTW is classified or otherwise approved by UL, unless such is the fact;

F. Treated Wood's FRTW is quality assured or otherwise approved by Timber Products Inspection, unless such is the fact;

G. Treated Wood's FRTW is certified or otherwise approved by the American Wood Preservers Bureau, unless such is the fact; and

H. Treated Wood's FRTW is certified or otherwise approved by any organization, individual, or governmental agency, unless such is the fact.

For at least three years from the last dissemination of any such representation, respondents shall maintain records to be made available upon reasonable request for review by the Federal Trade Commission substantiating representations referred to in this section of the order. Substantiation for representations in Sections I.A. through I.D. shall consist of certifications or tests made in accordance with customary industry standards by an inspection service for fire retardant wood recognized by one of the following bodies: Building Officials and Code Administrators International, Inc.; International Conference of Building Officials; or the Southern Building Code Congress International, Inc.

II.

It is further ordered, That, within fifteen (15) days after the date of service of this order, respondents shall furnish to Reliance Wood Preserving, Inc., Federalsburg, Maryland, the name and last known address of each purchaser of Treated Wood's FRTW that purchased such FRTW prior to April 15, 1985, as reflected in respondents' business records.

III.

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in its organization that may affect compliance obligations arising out of this order.

IV.

It is further ordered, That:

A. Within fifteen (15) days after service of this order, respondent Reliance Treated Wood, Inc., shall provide a copy of this order and of the complaint in this proceeding to each current officer and director

of Reliance Treated Wood, Inc., and, for a period of three (3) years after that date, shall provide a copy of such order and complaint to each new officer and director of Reliance Treated Wood, Inc., within fifteen (15) days after each new officer or director is appointed or elected, and shall secure from each current and future officer and director a signed statement acknowledging receipt of such copy.

B. Within fifteen (15) days after service of this order, respondent McCoy Industries, Inc., shall provide a copy of this order and of the complaint in this proceeding to each current officer and director of McCoy Industries, Inc., and, for a period of three (3) years after that date, shall provide a copy of such order and complaint to each new officer and director of McCoy Industries, Inc., within fifteen (15) days after each new officer or director is appointed or elected and shall secure from each current and future officer and director a signed statement acknowledging receipt of such copy.

V.

It is further ordered, That:

A. Within sixty (60) days after the date of service of this order, each respondent shall file or cause to be filed with the Commission a written report setting forth in detail the manner and from in which it has complied with this order.

B. In addition to the report required by V(A), each respondent shall file or cause to be filed, within sixty days after service of this order, copies of the most recent ASTM E 84 tests conducted to obtain certification that each species of Treated Wood's FRTW is fire retardant together with reports from the follow-up service utilized regarding its two most recent follow-up inspections.

C. In addition to the report required by V(A) and test results required by V(B), each respondent shall file or cause to be filed, one (1) year after the date of service of this order and at such times as the Commission or its staff by written notice require, a written report setting forth in detail the manner and form in which it has complied and is complying with this form.

DISSENTING STATEMENT OF COMMISSIONER ANDREW J. STRENIO, JR.

I would reject the agreement for the reasons specified at length in my earlier dissent from the Commission action of December 29, 1986 accepting the consent agreement, subject to final approval. In my view, both the danger to public safety from the misrepresentations

existence and extent of injury indicate that monetary redress should be included in the settlement.

In the absence of any such monetary redress, I respectfully dissent from the Commission's action granting final approval to this consent agreement.

