

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing-Federal Housing  
Commissioner**

[Docket No. FR-3969-N-01]

**Manufactured Home Construction and  
Safety Standards; Notice of Settlement**

**AGENCY:** Office of the Assistant  
Secretary for Housing-Federal Housing  
Commissioner (HUD).

**ACTION:** Notice of Settlement.

**SUMMARY:** Pursuant to a Stipulation and Order of Settlement and Dismissal issued by the United States District Court for the Southern District of New York on September 7, 1995, HUD is providing notice of a settlement of the case entitled and numbered *Thinking Vents, Inc. v. Henry Cisneros, Secretary of Housing and Urban Development*, 94 Civ. 8488 (AGS).

**DATES:** November 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Philip W. Schulte, Acting Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B-133, Washington, DC 20410-8000. Telephone: (voice) (202) 755-7420; (TDD) (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Accordingly, the following attachment is the Stipulation and Order of Settlement and Dismissal issued by the United States District Court for the Southern District of New York on September 7, 1995 in the case entitled and numbered *Thinking Vents, Inc. v. Henry Cisneros, Secretary of Housing and Urban Development*, 94 Civ. 8488 (AGS).

Dated: October 6, 1995.

Nicolas P. Retsinas,  
Assistant Secretary for Housing-Federal  
Housing Commissioner.

Attachment—United States District  
Court Southern District of New York  
94 Civ. 8488 (AGS).

*Thinking Vents, Inc.*, Plaintiff, v. *Henry Cisneros, Secretary of Housing and Urban Development*, in his official capacity,  
Defendant.

**Stipulation and Order of Settlement  
and Dismissal**

Whereas, plaintiff THINKING VENTS, Inc. ("TVI") commenced this action in the United States District Court for the Southern District of New York, seeking injunctive and monetary relief from

defendant HENRY CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("HUD"); and

Whereas, the parties to this Stipulation and Order of Settlement and Dismissal ("Stipulation and Order") seek to resolve this action without resort to further litigation;

It is hereby stipulated and agreed, by and between plaintiff TVI, and defendant HUD, as follows:

1. Plaintiff hereby dismisses this action with prejudice and without costs, disbursements, or attorneys' fees.

2. Upon this Stipulation being So Ordered by the Court, HUD shall issue a letter in the form annexed hereto as Exhibit A. Said letter shall be effective as of the date the Court signs this Stipulation and Order, and HUD shall forward the letter to all Design Approval Inspection Agencies and publish it, along with this Stipulation and Order, in the Federal Register as soon as practicable.

3. HUD shall, at its own cost, conduct field inspections of 100 homes that, subsequent to the Court's signing of this Stipulation and Order, have been fitted with the Thinking Cap Ventilation System ("TCVS") and sold. Such field inspections shall be conducted in the manner provided by the testing protocol annexed hereto as Exhibit B, provided, however, that a home shall not be eligible for a field test unless: (a) all clothes dryers are vented directly to the outside and not vented under the home; (b) no open flame heaters are used in the home unless vented directly outside; (c) the ground under the home does not have standing water; (d) skirting or underpinning has a minimum of one foot of ventilation for every 150 square feet of ground area; and (e) the ground beneath the home has a vapor barrier if the applicable home owner's manual so requires. The homes inspected shall be selected by a method of random selection set forth in paragraph 4, with 50 of the homes located in thermal Zone 3 (the "North Zone") and 50 of the homes located in thermal Zones 2 and 1 (the "South Zone"). HUD shall make every effort to complete the inspections within 18 months of the date this Stipulation and Order has been signed by the Court. However, in no event shall the inspection period exceed 30 months ("the testing period").

4. The homes shall be selected for inspection pursuant to a two-step process. (a) *First*, HUD will randomly select on a quarterly basis two pools of homes in which the TCVS has been installed subsequent to the Court's signing of this Stipulation and Order from lists of homes sold in each of the North and South Zones in the previous

three months. One pool shall be for the North Zone and one pool for the South Zone. Such random selection shall be based on the serial numbers of the homes on the lists. HUD shall randomly select 10% of the homes on the South Zone list for the South Zone pool, and 25% of the homes on the North Zone List for the North Zone pool. In the event that, at the time of a particular selection, there are fewer than 250 homes sold using the TCVS, the percentages will be increased to 20% in the South Zone and 40% in the North Zone. TVI shall have the right to be present at such random selection. (b) *Second*, from the North and South Zone pools of homes, HUD will select the homes to be inspected until a sufficient number of homes that meet the testing conditions set forth in paragraph 3 above have been selected. HUD will select homes based on considerations of obtaining a representative geographic sampling and limiting the costs of such inspections. If, however, there is any state that is not represented by either pool but contains homes in which the TCVS has been installed, HUD may randomly select up to two homes in that state for inspection. HUD will give TVI notice of any selections made.

5. At its option, TVI shall have the right, at its own cost, to conduct field inspections of the same 100 homes described in paragraphs 3 and 4, above. Such field inspections shall be conducted in the manner provided by the testing protocol annexed hereto as Exhibit C. If TVI chooses to conduct its inspection of a particular home on a different date or time than that designated by HUD, TVI shall give HUD 5 days notice of the date, time and location of the inspection, and HUD shall be entitled to attend any such inspection.

6. HUD shall give 5 days notice to TVI of the date, time and location for each of the field inspections described in paragraph 3, above, in order to enable TVI to exercise its right to be present at such inspections. No such inspections shall take place on a Friday, Saturday or Jewish Holiday. Such Jewish holidays will include those listed on the schedule annexed hereto as Exhibit D. For subsequent years, TVI will supply such list to HUD not later than January 31 of that year.

7. In the event that a home passes TVI's field inspection but fails HUD's field inspection, TVI may petition the Court to appoint an arbiter (the "arbiter") to determine whether such home passes or fails the field inspection. At the arbiter's discretion, said arbiter may visit the subject home(s) to assist the arbiter in reaching

a determination. The costs associated with the arbiter's work will be agreed upon by the arbiter with the parties prior to the arbiter performing any work, and will be borne by the party against which the arbiter finds.

8. TVI and HUD hereby stipulate and agree that the arbiter, and any persons duly designated to act on the arbiter's behalf, shall be immune from personal liability for any conduct undertaken pursuant to this Stipulation and Order in any action brought by TVI or HUD or by anyone acting on their behalf, at their behest, or in their interest. TVI and HUD hereby agree that they will not sue the arbiter, or any persons duly designated to act on the arbiter's behalf, on account of any action taken pursuant to the Stipulation and Order.

9. The Court may appoint an arbiter jointly recommended by the parties. To assist in such appointment, within 15 days of the date the Court signs this Stipulation and Order, the parties will each nominate five candidates to be recommended as arbiter, and the parties will use best efforts to agree upon and jointly recommend such arbiter from such candidates to the Court.

10. In the event that 94 or more of the homes inspected pass HUD's field inspection or the determination by the arbiter, then the TCVS shall be deemed to have passed the test and the letter in the form annexed hereto as Exhibit A shall remain in effect.

11. In the event that 7 or more of the homes inspected fail HUD's field inspection and, if such determination is sought, the arbiter's determination, then the TCVS shall be deemed to have failed the test, the letter in the form annexed hereto as Exhibit A may be revoked, and HUD's obligation under paragraph 3 of this Stipulation and Order to test homes shall terminate. Revocation pursuant to this paragraph and paragraph 14 below are the only circumstances under which the letter in the form annexed as Exhibit A may be revoked.

12. In the event that the TCVS fails the test, HUD shall provide notice to all owners of homes in which the TCVS has been installed that the TCVS has failed the test; that their homes do not comply with the applicable Federal Manufactured Home Construction and Safety Standards; that if there is any moisture damage, TVI will, during the two-year period following the date of failure of the test, repair, without cost to the owner, the home and replace the TCVS with a system that meets the standards; that the TCVS is under a ten year warranty from TVI for the operation of the TCVS; and that if there are any questions about the ventilation systems or the notice, the owners can

call HUD or the applicable State Administrative Agency. If, during the testing period or within two years from the date of the failure of the test as described in paragraph 11, a notified homeowner's home shows evidence of damage caused by the TCVS or the homeowner requests that the home be retrofitted, the home shall be retrofitted, at TVI's cost, with a ventilation system that brings the home into compliance with the applicable Federal Manufactured Home Construction and Safety Standards relating to ventilation, and TVI shall repair, without cost to the homeowner, any and all damage to the home caused by the installation and use of the TCVS.

13. During the testing period, TVI shall, on a monthly basis, provide HUD with two lists, one for the North Zone and one for the South Zone, of all consumers known to TVI who purchased homes containing the TCVS during the testing period. Each list shall include the consumer's address and telephone number, as well as the consumer's home's serial and HUD label numbers and the dates the consumer's home was produced and sold. The failure of TVI to provide all such information for a given home on an occasional basis shall not be a reason to exclude such home from the selection process if the information provided is otherwise sufficient to include such home in the selection process. If necessary to complete the testing within the testing period, TVI shall provide the consumer lists described above on a bi-weekly basis.

14. In the event that the random selection procedure described in paragraph 4 above does not yield 100 homes overall that meet the conditions for testing set forth in paragraph 3 above, then HUD will randomly select additional homes for the pools using the procedures set forth in paragraph 4 until 100 homes have been obtained. If, after exhaustion of the pools and lists using the procedures set forth above, there are still not 100 homes that meet the conditions for testing, then TVI may waive all the conditions set forth in paragraph 3, and HUD may select such homes to be tested based on considerations of obtaining a representative geographic sampling and limiting the costs of such inspections. In the event that TVI fails to grant such waiver, or, if upon such waiver there are still not 100 homes available for testing, the letter in the form annexed as Exhibit A may be revoked. In the event that a minimum of 400 homes containing the TCVS are not sold during the first 12 months of the testing period, or 200 homes are not sold in each 6 month

period thereafter, than the letter in the form annexed as Exhibit A may be revoked.

15. TVI shall maintain a general liability insurance policy with coverage of \$2,000,000.00. No later than 60 days after the date this Stipulation and Order is signed by the Court, TVI shall secure a product recall policy with coverage of \$500,000.00. Within one year of the date this Stipulation and Order is signed by the Court, TVI shall secure an umbrella coverage to increase the general liability coverage to \$5,000,000.00, and within two years of the date this Stipulation and Order is signed by the Court, TVI shall increase the general liability coverage to \$10,000,000.00.

16. TVI shall, during the testing period, provide customers with a ten year limited warranty as set forth in Exhibit E.

17. TVI shall, no later than 60 days after the date this Stipulation and Order is signed by the Court, post a bond in the amount of \$50,000.00 to be used in the event that damage occurs or retrofitting is need or requested that is not covered by the above-described insurance policies. During the testing period, TVI shall place 5% of its receipts derived from sales of the TCVs in an escrow account with an independent financial institution, which sums shall be available to augment the bond (the "set aside sum"). A portion of the set aside sum may be used to administer the escrow account. TVI will provide HUD with a monthly accounting of the set aside sum.

18. In the event that the TCVs passes the test as set forth in paragraph 10 above, the bond, and set aside sum, including accrued interest, will be the property of TVI. TVI will continue to provide a 10-year limited warranty as set forth in Exhibit E for the operation of the TCVSs it sells in the future. In the event that the TCVS fails the test as set forth in paragraph 11, the insurance, bond and set aside sum, and accrued interest, will remain in place for two years following the determination that TVI has failed the test as set forth in paragraph 11, and thereafter any sums remaining shall be in the property of TVI.

19. This Stipulation and Order constitutes the entire understanding and agreement between the parties with respect to the subject matter of this Stipulation and Order. All prior or contemporaneous understandings, discussions, agreements and/or representations with respect to the said subject matter, whether oral or written, including the Agreement dated October 22, 1987, and the Alternative Construction letter issued to Horton

Homes, are expressly superseded by this Stipulation and Order.

20. This Stipulation and Order will be binding on and will inure to the benefit of the parties and their respective agents, servants, employees, successors, assigns, and related, affiliated and subsidiary entities.

21. This Stipulation and Order will be interpreted and otherwise governed under the laws of the United States.

22. The Court shall retain jurisdiction over this matter and over the parties for the purpose of enforcing the terms of the Stipulation and Order and any Order entered by the Court thereupon. In the event either party to this Stipulation and Order fails to fulfill its obligations as set forth herein, the sole remedy will be an application brought before this Court. Any controversies between the parties regarding the terms of this Stipulation and Order shall be resolved by the Court employing such procedures as the Court deems appropriate.

Dated: September 5, 1995, New York, New York.

Thinking Vents, Inc.

By:

Stanley Kolt,

President.

Dated: September 5, 1995, New York, New York.

Laufer & Farkash

Attorneys for Plaintiff

By:

Jacob Laufer (JL 2846)

101 East 52d Street, New York, NY 10022,  
(212) 308-8500.

Dated: September 5, 1995, Washington, DC.  
United States Department of Housing and  
Urban Development.

By:

Nicholas Retsinas,

Assistant Secretary for Housing.

Dated: September 6, 1995, New York, New York.

Mary Jo White,

United States Attorney for the Southern  
District of New York Attorney for Defendant.

By:

Beth E. Coldman (BG-6247),

Assistant United States Attorney, 100 Church  
Street—19th Floor, New York, New York  
10007, Tel. No.: (212) 385-6225.

So Ordered:

Allen G. Schwartz,

United States District Judge.

Exhibit A

Mr. Stanley Kolt, Chief Executive Officer  
Thinking Vents, Inc.

P.O. Box 752

Mamaroneck, New York 10543-0752

Dear Mr. Kolt: Subject to the terms and conditions of the Stipulation and Order dated September 1, 1995, entered in the case captioned *Thinking Vents, Inc. v. Henry*

*Cisneros*, 94 Civ. 8488 (AGS), in the Southern District of New York (the "Stipulation"), the U.S. Department of Housing and Urban Development ("Department") will take no action with regard to any possible violations of the provisions of the Manufactured Home Construction and Safety Standards ("Standard") and Manufactured Home Procedural and Enforcement Regulations ("Regulations") listed below against any manufactured home manufacturer that installs and utilizes the Thinking Cap Ventilation System ("TCVS") in any of its homes. Accordingly, all Design Approval Primary Inspection Agencies ("DAPIAs") are authorized to approve designs utilizing the TCVS, notwithstanding that said homes are not constructed to the precise specifications of the following provisions of the Standards and regulations:

1. 24 C.F.R. § 3280.103(b)(4), "Whole House Ventilation," insofar as interior air will be ventilated through the roof cavity.

2. 24 C.F.R. § 3280.504(c)(1), "Attic and Roof Ventilation," insofar as neither the minimum free ventilation area nor a mechanical ventilation system will be installed.

3. 24 C.F.R. § 3280.504(c)(2), "Attic and Roof Ventilation," insofar as certain single section manufactured homes that are excepted from attic ventilation required by 24 C.F.R. § 3280.504(c)(1), have air leakage paths to the attic space that are not sealed.

4. 24 C.F.R. § 3282.205(c), "Certification Requirements," insofar as the label, in the form required by 24 C.F.R. §§ 3280.11 and 3280.362(c)(2), may be placed on each affected home even though the home is not constructed to the precise specifications of the Standards set forth above.

A copy of this letter will be forwarded to all DAPIAs. Upon receipt of this letter, DAPIAs are authorized to approve designs utilizing the TCVS under the conditions set forth herein. DAPIAs shall provide the National Conference of States Building Codes and Standards, Inc. ("NCSBCS") with a set of approved plans for all designs to be covered by this letter within 5 days of the date of approval of such designs. The failure of any manufactured home design to comply with the precise specifications of the Standards and Regulations set forth above is not grounds for a DAPIA to deny approval of any manufactured home design.

Sincerely,

David C. Nimmer,

Director, Office of Manufactured Housing and  
Regulatory Functions.

Exhibit B—Inspection Protocol  
Thinking Cap Ventilation System

*Purpose of Inspection*

To determine if the presence of moisture in the ceiling/roof cavity is at a level which is known to affect material and structural degradation.

*Method of Inspection*

The primary method of inspection is to visually examine the interior of the ceiling/roof cavity for signs that the wood and wood based products have

reached fiber saturation and for signs of surface moisture on metal surfaces and other materials of low permeability.

*Failure Level of Moisture*

The failure level of moisture content shall be fiber saturation point of the material being evaluated.

The failure level of surface moisture will be when wetting occurs and/or evidence of moisture accumulation exist.

*Indicators That Fiber Saturation is Exceeded For Wood and Wood-Based Products*

Warping, bowing, buckling, delamination, swelling, visible mold, smell of mold, water marks, wet-to-touch, moisture droplets, ice and frost build-up, wood rotting or other signs of material decomposition.

*Indicators of Excessive Accumulating Surface of Moisture*

Ice and frost build-up, puddling of water on vapor retarder, wet insulation frost and ice on insulation, under surfaces, wet-to-touch, mold smell, visible mold, water marks on ceiling. Deterioration of ceiling. Evidence of moisture dripping into walls.

*Pass/Fail Criteria*

A failure would occur if any of the following conditions are present:

I. Fiber saturation levels are exceeded as shown by any of the indicators identified above.

II. Moisture is Accumulating in the Ceiling/Roof cavity as shown by any of the indicators identified above.

*Other Conditions*

1. The homes will be set-up in accordance with the Manufactured Housing Construction and Safety Standards and comply in all relevant respects with the standards.

2. The Thinking Cap will be inspected to note if the system is open or closed and the attic and outdoor temperature at the time of the inspection should be noted on the inspection report.

3. The moisture content of wood framing members may be tested in accordance in ASTM D4444-94, *Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters*.

Exhibit C—Testing Protocol for  
Thinking Cap Ventilation System

The testing shall consist of an on-site investigation of each of 100 manufactured homes that are equipped with the Thinking Cap Ventilation System ("the subject homes").

Stanley Kolt or his representative shall conduct a test to determine the

level of moisture in the home. Such test shall be conducted by exposing the wood members of the attic by removing a single ceiling vent and determining the quantity of water in the wood. Said quantity shall be determined by the use of a wood moisture detector. A wood moisture detector reading of 19 percent or less shall be an acceptable level of moisture in the wood members of the attic. Should the wood moisture detector reading be 19 percent or less then the subject home shall be deemed to have passed the investigation. Should the wood moisture detector reading be greater than 19 percent, then the subject home shall be deemed to have failed the investigation.

#### Exhibit D—Jewish Holidays 1995–96

1995: September 24, 25, 26, 27; October 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 18.  
1996: March 3, 4, 5; April 2, 3, 4, 9, 10, 11; May 23, 24; July 25; September 15, 16, 22, 23, 24, 30.

#### Exhibit E—Thinking Vents, Inc.

The “Thinking Cap” is a fully automatic natural passive total home

ventilation system. It operates continually without using electricity. This system improves the ventilation of the occupied space of the home and attic. To maintain the optimum utilization of the system with respect to ventilation and thermal efficiency, do not block or impair the automatic operation of the ceiling vents of your home or the roof. “Thinking Caps”.

#### Limited Warranty

Thinking Vents, Inc. warrants each “Thinking Cap” ventilation system against defects in materials and factory workmanship for a period of ten (10) years from the date of manufacture. If under normal use and service the “Thinking Cap” discloses such defect within the warranty period, the homeowner may ship the entire unit or any defective part or parts to the manufacturer, freight prepaid by the purchaser and the manufacturer shall repair or replace such defective part or parts as may, in its judgment, be required to return the unit to full and proper working order.

#### Consumer Information and Comment Card

1. Owner's Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip \_\_\_\_\_  
Telephone No \_\_\_\_\_
2. Manufacturer's Name \_\_\_\_\_ Date Purchased \_\_\_\_\_
3. Home Model \_\_\_\_\_ Serial No. \_\_\_\_\_
4. Date of Manufacture \_\_\_\_\_ HUD No. \_\_\_\_\_
5. SQ FT of Home \_\_\_\_\_ Single \_\_\_\_\_ Double \_\_\_\_\_ Triple \_\_\_\_\_ Wide \_\_\_\_\_
6. How many in household \_\_\_\_\_ Shingle Roof \_\_\_\_\_ Metal Roof \_\_\_\_\_
7. What is your heating system type \_\_\_\_\_
8. Do you have central air conditioning \_\_\_\_\_
9. Is this the first “thinking Cap” system in any home you have owned or occupied \_\_\_\_\_
10. Comments \_\_\_\_\_

Please return card so we can best service your ten year warranty.

[FR Doc. 95–27518 Filed 11–9–95; 8:45 am]

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