



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 27 2007

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0186 2334

Thomas E. Battison  
2158 Tibbetts Wick Road  
Girard, OH 44420

Consent Agreement and Final Order, Docket No. **TSCA-05-2007-0019**

Dear Mr. Battison:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 27, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,264 is to be paid in the manner prescribed in paragraphs 37, 38 and 39. Please be certain that the number **BD** 2750747X018 and the docket number are written on both the transmittal letter and on the check. Payment is due by October 29, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Eric Olson, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

\_\_\_\_\_  
In the Matter of : )  
 )  
Thomas Battison )  
Girard, Ohio )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2007-0019

Proceeding to Assess a Civil Penalty  
under Section 16(a) of the Toxics  
Substances Control Act,  
15 U.S.C. § 2615(a)

2007 SEP 27 AM 11:30  
REGIONAL OFFICE  
EPA REGION 5

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Division Director of the Land and Chemicals Division, U.S. EPA, Region 5.
3. Respondent is Thomas Battison of Girard, Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

### **Statutory and Regulatory Background**

7. Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

8. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule).

9. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

10. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

11. 40 C.F.R. § 745.103 defines “lessor” as any individual that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.103 defines “lessee” as any individual that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “owner” as any entity that offers target housing for

lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trust, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.100 requires, among other things, that a lessor of target housing complete the disclosure activities specified in 40 C.F.R. § 745.107 before a lessee is obligated under any contract to lease target housing.

15. 40 C.F.R. § 745.113(b) requires that each lease for target housing include as an attachment or within the lease itself a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects the violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

#### **Stipulated Facts**

17. Between November 1, 2002, and September 15, 2005, Respondent owned residential rental properties in Youngstown, Ohio, at 448 Fairgreen and at 46 Lauderdale (Respondent's Properties).

18. Respondent's Properties were constructed prior to 1978.

19. Respondent's Properties and each apartment unit within the properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On the following dates, Respondent, either directly or through Respondent's authorized agent, entered into the following three lease agreements (contracts) with individuals for the lease of units in the Respondent's Properties:

<b>Address</b>	<b>Unit</b>	<b>Date of Lease</b>
448 Fairgreen, Youngstown, Ohio	#4	Oral Contract Approx. 11/2/2004
46 Lauderdale, Youngstown, Ohio	#1	11/01/2002
46 Lauderdale, Youngstown, Ohio	#2	09/15/2005

21. Each of the three contracts referenced in paragraph 20, above, covered a term of occupancy greater than 100 days.

22. Between November 1, 2002 and September 5, 2005, Respondent as the owner of Respondent's Properties offered for lease units in his properties, and individuals entered into contracts on the dates listed in paragraph 20, above, to lease those units.

23. Respondent is a "lessor," as defined by 40 C.F.R. § 745.103, since he has offered the target housing referenced in paragraph 20, above, for lease.

24. Each individual who signed a lease or entered into an oral contract to pay rent in exchange for occupancy of a unit at Respondent's Properties, referenced in paragraph 20, above, became a "lessee" as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

#### **Alleged Violations**

25. Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement in the oral contract entered on or about November 2, 2004,

for 448 Fairgreen, Unit #4, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

26. Respondent failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in the oral contract entered on or about November 2, 2004, for 448 Fairgreen, Unit #4, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

27. Respondent failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist, in the oral contract entered on or about November 2, 2004 for 448 Fairgreen, Unit #4, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

28. Respondent failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist, in the November 1, 2002 contract for 46 Lauderdale, Unit #1, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

29. Respondent failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet, in the oral contract

entered on or about November 2, 2004 for 448 Fairgreen, Unit #4, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

30. Respondent failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet, in the November 1, 2002 contract for 46 Lauderdale, Unit #1, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

31. Respondent failed to include, either within the contract or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature, in the oral contract entered on or about November 2, 2004 for 448 Fairgreen, Unit #4, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

32. Respondent failed to include, either within the contract or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature, in the November 1, 2002 contract for 46 Lauderdale, Unit #1, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

33. Respondent failed to include, either within the contract or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature, in the September 15, 2005 contract for 46 Lauderdale, Unit #2, Youngstown, Ohio referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA.

### **Penalty Calculation**

34. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C. F. R. Part 19.

35. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

36. In consideration of Respondent's cooperation and agreement to perform the Window Replacement Project specified in paragraphs 42 to 53, below, Complainant believes that an appropriate penalty to settle this action is \$1,264.

37. Respondent shall pay the \$1,264 civil penalty by cashier's or certified check payable to the "*Treasurer, United States of America,*" within 30 days after the effective date of this CAFO.

38. Respondent shall send the check to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, Pennsylvania 15251-7531

39. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent shall write the case docket number and the BD number on the face of the



check. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Estrella Calvo (DT-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Erik Olson (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

40. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraph 51, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

41. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

**Window Replacement Project and Lead Clearance Sampling**

42. Within four months after entry of this CAFO, Respondent must complete a Window

Replacement Project and lead clearance sampling designed to protect tenants from potential lead-based paint hazards by replacing windows in the rental property at 8274 Main Street, Kinsman, Ohio 44428.

43. The Window Replacement Project must be conducted in compliance with the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws and regulations.

44. Respondent must perform standard lead clearance testing upon completion of the Window Replacement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws, in the property listed in paragraph 42, above. The individual or company executing the standard lead clearance sampling must not be paid or employed or, otherwise compensated by the individuals conducting the Window Replacement Project.

45. Respondent must spend at least \$11,371 to complete the Window Replacement Project and lead clearance sampling.

46. Respondent certifies that Respondent is not required to perform the Window Replacement Project by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date he signs this CAFO. Respondent further certifies that he has not received, and is not negotiating to receive, credit for the Window Replacement Project in any other enforcement action.

47. U.S. EPA may inspect the property at any time to monitor Respondent's compliance with this CAFO's requirements. Any access to the building or units therein will be provided

on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

48. Respondent must submit a Window Replacement Project report and lead clearance sampling report upon completion of the Window Replacement Project for the property listed in paragraph 42, above, within four months following entry of the CAFO. These reports must contain the following information:

- a. a description of the Window Replacement Project as completed at the property referenced in paragraph 42, above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property referenced in paragraph 42, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. itemized costs of services used to complete the lead clearance sampling documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;
- e. documentation that the individuals who performed the Window Replacement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local laws and regulations;
- f. certification that Respondent has completed the Window Replacement Project and the lead clearance sampling in compliance with this CAFO; and
- g. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the Window Replacement Project and lead clearance sampling.

49. Respondent must submit all notices and reports required by the CAFO by first class mail to Estrella Calvo, at the address in paragraph 39, above.

50. In each report that Respondent submits as provided by this CAFO, Respondent or

Respondent's authorized representative must certify that the report is true and complete by including the following statement signed by the Respondent:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. If Respondent violates any requirements of this CAFO relating to the Window Replacement Project and sampling, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spends less than \$11,371 in performing the Window Replacement Project, whether completed or not, he must pay a stipulated penalty equal to the difference between \$11,371 and the actual amount spent;
- b. If Respondent halts or abandons work on the Window Replacement Project, he must pay a stipulated penalty of \$5,686 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the Window Replacement Project;
- c. If Respondent fails to ensure and document that lead clearance sampling work for the property listed in paragraph 42, above, is executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, he shall pay a stipulated penalty of \$5,686;
- d. If Respondent fails to ensure and document that the Window Replacement Project complies with the requirements of paragraphs 42 through 45, above, he shall pay a stipulated penalty of \$5,686; and
- e. If Respondent fails to submit timely the Window Replacement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 48, above, or if Respondent fails to satisfactorily address each requirement in the window replacement completion report paragraphs of the CAFO, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$11,371.

52. U.S. EPA's reasonable and good faith determination of whether the Respondent satisfactorily completed the Window Replacement Project and lead clearance sampling and

satisfactorily completed the Window Replacement Project and lead clearance sampling and whether they made good faith, timely efforts to complete the Window Replacement Project and lead clearance sampling will bind Respondent for the purposes of this CAFO.

53. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the method of payment specified in paragraphs 37 through 39, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

#### **Terms of Settlement**

54. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

55. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

56. Respondent certifies that, as of the effective date of this CAFO, it is in full compliance with the requirements of 40 C.F.R. Part 745, Subpart F, and intends to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

57. The parties consent to the terms of this CAFO.

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

59. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the TSCA and other applicable laws and regulations.

60. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and

regulations.

61. The terms of the CAFO bind the Respondent and its assigns.

62. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party for whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and fees in this action.

64. This CAFO constitutes the entire agreement between the parties.

65. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

Consent Agreement and Final Order  
In the Matter of: Thomas Battison

Docket No. TSCA-05-2007-0019

Date: 9-4-07

By: Thomas E Battison  
Thomas Battison, Respondent

United States Environmental Protection Agency,  
Complainant

Date: 9/21/07

By: Margaret M. Guerriero  
Margaret M. Guerriero, Director  
Land and Chemicals Division

2007 SEP 27 AM 11:31

REGIONAL HEALTH AND CLIMATE  
DIVISION  
U.S. ENVIRONMENTAL PROTECTION AGENCY

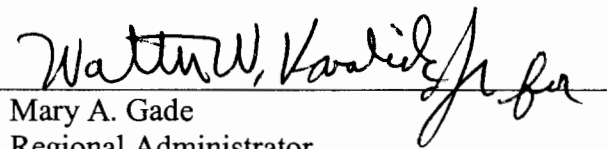
In the Matter of: Thomas Battison, Respondent

Docket No. TSCA-05-2007-0019

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 9/24/07



Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

2007 SEP 27 AM 11:31

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



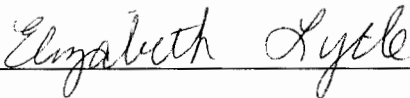
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Thomas Battison, was filed on September 27, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0186 2334, a copy of the original to the Respondents:

Thomas E. Battison  
2158 Tibbetts Wick Road  
Girard, OH 44420

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Eric Olson, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0019**

2007 SEP 27 AM 11:30  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
CHICAGO, ILLINOIS 60604