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BEFORE THE ENVIRONMENTAL PROTECTION AGENCY REGION III

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REGIONAL HEARING CLERK EPA REGION III, PHILA. PA

In the Matter of:

CLARENCE HAZEL, 2807 Landon Drive Wilmington, DE 19810 Respondent.

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Docket No. TSCA-03-2012-0015

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

- 1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Clarence Hazel ("Respondent"), pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent's alleged failure, as owner and lessor of certain housing, to comply with requirements of 40 C.F.R. Part 745, Subpart F, Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

3. In accordance with 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby resolves, as part of the settlement set forth herein, the claims alleged against Respondent as identified in an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) filed in this matter on March 15, 2012. The Complaint is herein incorporated by reference.

## II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

## III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO”.
6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. **Paragraphs 2 - 27 of the Complaint are hereby incorporated by reference in this CAFO. The subject paragraphs set forth the factual and legal allegations made by EPA which constitute the basis of the claims being settled and resolved in this CAFO with respect to Respondent.**

## V. CIVIL PENALTY

12. EPA and Respondent enter into this Consent Agreement and the attached Final Order in order to fully settle and resolve all allegations set forth in Section IV, “Findings of Fact and Conclusions of Law” above, and all claims for civil penalties pursuant thereto.
13. In full settlement of the alleged violations set forth in Paragraph 11 above, Respondent hereby consents to the assessment and payment of a civil penalty in the amount of six thousand, three hundred dollars (\$6,300 ) in accordance with the payment terms set forth below. Respondent further consents to the issuance of the attached Final Order.
14. The Parties represent that the settlement terms are reasonable and are based upon EPA’s consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent’s, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Section 1018 — Disclosure Rule Enforcement Response and Penalty Policy* (“December 2007 ERPP”). EPA also has considered the *Adjustment of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by

Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* (“2004 Skinner Memorandum”). Pursuant to 40 C.F.R. Part 19, penalties for Disclosure Rule violations occurring after January 30, 1997 were increased by 10% to account for inflation, thereby adjusting the statutory maximum penalty to \$11,000. While the statutory maximum penalty for Disclosure Rule violations remains at \$11,000, 40 C.F.R. Part 19 and the 2004 Skinner Memorandum provide that penalties for Disclosure Rule violations occurring after March 15, 2004, are to be increased by an additional 17.23% to account for subsequent inflation, not to exceed the aforementioned \$11,000 limitation. The December 2007 ERPP recognizes and incorporates the above penalty inflation adjustment requirements in its penalty calculation methodology, guidance and appended matrices. EPA has determined that Respondent’s payment of the civil penalty and any applicable interest shall constitute full and final satisfaction of the violations set forth in Paragraph 11 of this CAFO.

15. Payment of the six thousand, three hundred dollars (\$6,300) civil penalty required under Paragraph 13, above, may be paid in five (5) installments with interest at the rate of 1% per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1<sup>st</sup> Payment: The first payment in the amount of two thousand, two hundred and fifty dollars (\$2,300), consisting of a principal payment of \$2,300 and an

interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand delivered to Respondent;

- b. 2<sup>nd</sup> Payment: The second payment in the amount of one thousand and six dollars and thirty eight cents (\$1,006.38), consisting of a principal payment of \$ 996.16 and an interest payment of \$10.22, shall be paid within ninety (90) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- c. 3<sup>rd</sup> Payment: The third payment in the amount of one thousand and six dollars and thirty eight cents (\$1,006.38) , consisting of a principal payment of \$998.70 and an interest payment of \$7.68, shall be paid within one hundred and twenty (120) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- d. 4<sup>th</sup> Payment: The fourth payment in the amount of one thousand and six dollars and thirty eight cents (\$1,006.38) , consisting of a principal payment of \$1,001.26 and an interest payment of \$5.12, shall be paid within one hundred and fifty (150) days of the date on which this CAFO is mailed or hand-delivered to Respondent;
- e. 5<sup>th</sup> Payment: The fifth payment in the amount of one thousand and six dollars and thirty eight cents (\$1,006.38) , consisting of a principal payment of \$1,003.88 and an interest payment of \$ 2.50, shall be paid within one hundred and

eighty (180) days of the date on which this CAFO is mailed or hand-delivered to Respondent; pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of six thousand three hundred dollars (\$6,300) and total interest payments in the amount of twenty five dollars and fifty two cents (\$25.52).

16. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 15, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. **In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 20, 21 and 22, below,** in the event of any such failure or default.
  
17. Notwithstanding Respondent's agreement to pay the assessed civil penalty and applicable interest in accordance with the installment schedule set forth in Paragraph 15, above, Respondent may pay the entire civil penalty of six thousand three hundred dollars (\$6,300) within thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent and, thereby,

avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a) as described in Paragraph 20, below. In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

18. Respondent shall remit each installment payment for the civil penalty and interest, pursuant to Paragraph 15, above, and/or the full penalty, pursuant to Paragraphs 16 or 17, above, and/or any administrative fees and late payment penalties, in accordance with Paragraphs 20, 21 , and 22 , below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference his name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2012-0015;
- b. All checks shall be made payable to “**United States Treasury**”;
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank  
Government Lockbox 979077



U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court  
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described herein shall be sent simultaneously to:

Benjamin Cohan  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
and  
Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

19. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described

below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

20. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11(a).
21. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
22. A late penalty charge of six (6) percent per year will be assessed monthly on any portion

of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11 (c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

23. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

#### VI. EFFECT OF SETTLEMENT

24. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA and/or the RLBPHRA for the specific violations alleged in Section IV (“Findings of Fact and Conclusions of Law”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### VII. OTHER APPLICABLE LAWS

25. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations.

#### VIII. CERTIFICATION OF COMPLIANCE

26. Respondent certifies to Complainant, upon investigation, to the best of his knowledge and belief, that such Respondent, as the “owner” of the properties that are referenced in this Consent Agreement, is currently in compliance with the provisions of

TSCA, the RLBPHRA and 40 C.F.R. Part 745, Subpart F.

#### IX. RESERVATION OF RIGHTS

27. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18 (c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

#### X. PARTIES BOUND

28. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's successors and assigns. By his signature below, the Respondent acknowledges that he is legally bound to the terms and conditions of this Consent Agreement and Final Order.

XI. EFFECTIVE DATE

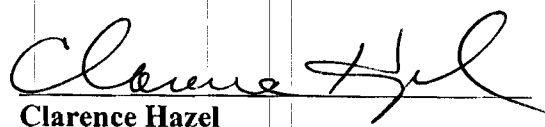
29. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XII. ENTIRE AGREEMENT

30. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.


**Respondent:**

Date: 6/13/2012

  
Clarence Hazel

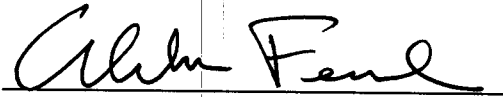
**For Complainant:**

Date: 6/12/2012

  
Benjamin Cohan  
Sr. Asst. Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional  
Judicial Officer, issue the attached Final Order.

Date: 6/28/12



**Abraham Ferdas**, Director  
Land and Chemicals Division  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**CLARENCE HAZEL,  
2807 Landon Drive  
Wilmington, DE 19810  
Respondent.**

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**Docket No. TSCA-03-2012-0015**  
**Proceeding under Sections 409 and 16(a)**  
**of the Toxic Substances Control Act,**  
**15 U.S.C. §§ 2689 and 2615(a)**

**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent has executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

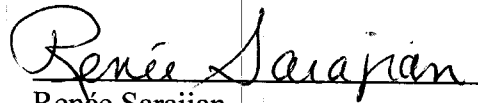
**WHEREFORE**, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil penalty under Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the RLBPHRA, and having determined, based on the representations of the parties to the attached Consent Agreement, that the agreed-upon six thousand, three hundred dollar (\$6,300) civil penalty was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of six thousand, three hundred dollars (\$6,300)



in accordance with the payment provisions set forth in the attached Consent Agreement.

The effective date of the foregoing Consent Agreement and this **FINAL ORDER** is the date on which this **FINAL ORDER** is filed with the EPA Regional Hearing Clerk.

Date: 7/3/12



Renée Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III

