



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FedEx
Confirmation of Receipt Requested

September 30, 2008

Kurt Blake, Esquire
Blake & Gross, L.L.C.
29 E. Philadelphia Street
York, PA 17401

Re: *Consent Agreement and Final Order*
EPA Docket No. TSCA-03-2008-0416

Dear Mr. Blake:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in settlement of the above referenced matter.

Should you have any question or concerns, please feel free to contact me at (215) 814-2681.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis F. Ramalho".

Louis F. Ramalho
Sr. Assistant Regional Counsel

Enclosures

cc: Demian Ellis (3LC61)



**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Kurt A. Blake
29 E. Philadelphia Street
York, PA 17404**

Respondent,

**524 Smith Street
York, Pennsylvania**

**285 W. Cottage Place
York, Pennsylvania**

Target Housing.

Docket No. TSCA-03-2008-0446 *

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CONSENT AGREEMENT

Preliminary Statement

1. The Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“Complainant”) and Kurt A. Blake (“Respondent”), wishing to settle EPA’s claims for civil penalties arising from the violations alleged in this case, have consented to the entry of this Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and 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*”), 40 C.F.R. Part 22 including, but not limited to, 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement (“CA”) and the accompanying Final Order (“FO”), address violations by Respondent of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* (“RLBPHRA”), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689.
2. For purposes of this proceeding only, Respondent agrees not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof, and Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Respondent neither admit nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 2, above.

4. For the purposes of this proceeding only, Respondent hereby expressly waives his right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
7. Respondent shall bear his own costs and attorney's fees, if any.
8. The provisions of this CAFO shall be binding upon Respondent and his successors and assigns.
9. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
10. Respondent certifies that he is currently in full compliance with RLBPHRA, 42 U.S.C. §§ 4851 *et seq.*, and the Disclosure Rule codified at 40 C.F.R. Part 745.
11. Nothing in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

Notice of Action to the Commonwealth of Pennsylvania

12. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO.

Findings of Fact and Conclusions of Law

13. The EPA 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 the Consolidated Rules of Practice, 40 C.F.R. §§ 22.1(a)(5) and 22.4.
14. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "target housing" means 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.
15. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term "residential dwelling" means either a single family dwelling, including attached structures such as porches and

stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

16. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
17. The properties located at 524 Smith Street, York, Pennsylvania, and 285 West Cottage Place, York, Pennsylvania consist of and, at the time of the violations alleged herein, consisted of real property on which there is situated one or more buildings used as the home or residence for one or more persons.
18. The buildings located at 524 Smith Street, York, Pennsylvania, and 285 West Cottage Place, York, Pennsylvania are structures that contain more than one separate residential dwelling unit, and in which each unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
19. The structures located at 524 Smith Street, York, Pennsylvania, and 285 West Cottage Place, York, Pennsylvania, and all residential dwelling units therein, were constructed prior to 1978.
20. The structures located at 524 Smith Street, York, Pennsylvania, and 285 West Cottage Place, York, Pennsylvania, and all residential dwelling units therein, are not and, at the time of the violations alleged herein, were not housing used for the elderly or persons with disabilities, and are not and, at the time of the violations alleged herein, were not “0-bedroom dwellings” as defined by 40 C.F.R. § 745.103.
21. The structures and all residential dwelling units therein, identified above in Paragraphs 17 - 20 (hereinafter collectively referred to as the “Target Housing”), are and, at the time of the violations alleged herein, were “residential dwellings” and “target housing” within the meaning of those terms as provided by RLBPHRA Sections 1004(23) and (27), 42 U.S.C. § 4581b(23) and (27), TSCA Sections 401(14) and (17), 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.
22. Pursuant to 40 C.F.R. § 745.103, the term “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.
23. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means any entity 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.

24. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means any entity 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 non-profit organizations.
25. Respondent is and, at all times relevant to this CAFO, was the “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, of residential rental property (“Rental Property”) and the rental dwelling units therein (“Residential Dwellings” or “Apartments”) as set forth more specifically below.
26. Respondent holds and, at the time of the violations alleged herein, held legal title to the Target Housing identified in Paragraphs 18 - 21, above, and, therefore, was and is the “owner” of such Target Housing as that term is defined by 40 C.F.R. § 745.103.
27. On November 28, 2006, Respondent entered into a written contract (“Lease #1”) with a lessee (“Lessee #1”) to rent and/or lease a residential unit at the 524 Smith Street, York, Pennsylvania for a term of one year commencing on November 28, 2006 and terminating on November 27, 2007.
28. On July 13, 2006, Respondent entered into a written contract (“Lease #2”) with a lessee (“Lessee #2”) to rent and/or lease a residential unit at 285 West Cottage Place, York, Pennsylvania for a term of one year commencing on July 13, 2006 and terminating on July 12, 2007.
29. On the dates referred to in Paragraphs 27 and 28, above, and at the time of the violations alleged herein, Respondent was the “lessor” of the Target Housing referred to in Paragraphs 18 -21, above, as that term is defined at 40 C.F.R. § 745.103.
30. 40 C.F.R. § 745.118(e) provides, in pertinent part, that failure or refusal to comply with 40 C.F.R. §§ 745.107, .110, .113 and/or .115 constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Count I

31. The allegations contained in Paragraphs 1 through 30 of this CAFO are incorporated by reference herein as though fully set forth at length.
32. Pursuant to 40 C.F.R. § 745.107(a)(2), the lessor is required to disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee is obligated under any contract to lease target housing.
33. Respondent failed to disclose, either as an attachment to or within Lease #1 identified in Paragraph 27 of this CA, the presence of known lead-based paint and/or lead-based paint hazards in the target housing before the Lessee #1 was obligated under the contract to lease target housing.

34. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.107(a)(2) by failing to disclose, either as an attachment to or within Lease #1, as identified above in Paragraph 27, the presence of known lead-based paint and/or lead-based paint hazards in the target housing before the Lessee #1 was obligated under the contract, constitutes a violation of 40 C.F.R. § 745.107(a)(2), RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Count II

35. The allegations contained in Paragraphs 1 through 34 of this CAFO are incorporated by reference herein as though fully set forth at length.
36. Pursuant to 40 C.F.R. § 745.107(a)(4), the lessor is required to provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased.
37. Respondent failed to provide Lessee #1 with records or reports available to the Respondent pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 524 Smith Street, York, Pennsylvania.
38. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.107(a)(4) by not providing Lessee #1 with records or reports available to the Respondent pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 524 Smith Street, York, Pennsylvania constitutes a violation of 40 C.F.R. § 745.107(a)(4), RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Count III

39. The allegations contained in Paragraphs 1 through 38 of this CAFO are incorporated by reference herein as though fully set forth at length.
40. Pursuant to 40 C.F.R. § 745.113(b)(6), the contract to lease target housing shall include, either as an attachment or within the contract, the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signatures.
41. Respondent failed to include, either as an attachment to or within Lease #2 identified in Paragraph 28 of this CA, the date of the agent's signature as required by 40 C.F.R. § 745.113(b)(6).
42. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.113(b)(6) by not including, either as an attachment to or within Lease #2, as identified above in Paragraph 28, the date of the agent's signature constitutes a violation of 40 C.F.R. § 745.113(b)(6), RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Civil Penalty

43. Respondent agrees to pay the amount of One Thousand One Hundred and Twenty-Eight Dollars (\$1,128.00) and to perform the Lead-Based Paint Abatement Project, as described herein, in satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the CA. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent. In the event Respondent fails to perform the Lead-Based Paint Abatement Project required by this CAFO, Respondent agrees to pay additional penalties as set forth in Paragraph 72 of this CAFO.
44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs 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.
45. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).
46. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
47. A late payment penalty of six percent per year will be assessed monthly on any portion of a 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 a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
48. The aforesaid settlement amount is based upon Complainant's consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which include the nature, circumstances, extent, and gravity of the violations and the violator's

ability to pay, ability to continue in business, history of prior violations, and degree of culpability, and other matters as justice may require.

49. Respondent shall pay the civil penalty specified in paragraph 43, above, by electronic funds transfer (“EFT”), as described below, or by sending a cashier’s check or certified check, made payable to the order of “**United States Treasury.**”

a. Checks sent by regular US Postal Service mail delivery must be addressed to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Natalie Pearson, 314-418-4087

b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. EPA, Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

c. Any EFT shall be transmitted to:

Wire Transfer

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 wire transfer message should read:
“D 68010727 Environmental Protection Agency”)

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Account 310006
CTX Format Transaction Code 22 - checking

Environmental Protection Agency
808 17th Street, NW
Washington, DC 20074

Contact for ACH: Jessie White (301)887-6548

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open the form and complete required fields.

50. All payments by Respondent shall reference his name and address and the Docket Number of this case (RCRA-03-2008-0416). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Louis F. Ramalho (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Lead-Based Paint Abatement Project

51. **Respondent SHALL ENSURE THAT ALL WORK PERFORMED PURSUANT TO THE LEAD-BASED PAINT ABATEMENT PROJECT IS PERFORMED BY PERSONS AUTHORIZED TO PERFORM SUCH WORK, AND IN CONFORMANCE WITH THE STANDARDS SET FORTH IN 40 C.F.R. PART 745, 34 PA. CODE CHAPTER 203, AND ANY OTHER APPLICABLE STATE AND LOCAL LAWS OR REGULATIONS.**
52. As a condition of this settlement, Respondent agrees to solicit bids from and enter into appropriate contracts with independent third parties to perform the following Lead-Based Paint Abatement Project (“Lead-Based Paint Abatement Project”) tasks (“Lead-Based Abatement Tasks”) at Respondent’s Target Housing in accordance with the schedule, standards, conditions, and reporting milestones as set forth more fully below:
- a. Perform a lead “Risk Assessment,” as defined in 40 C.F.R. § 745.223, at 524 Smith St. and 285 West Cottage Place, York, Pennsylvania;
 - b. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by replacing as many as possible of those windows (including sashes, window heads, jambs, sills or stools and troughs) identified by the risk assessment as containing lead-based paint with windows that are lead-based paint free up to the dollar limit set forth below in Paragraph 54;
 - c. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible of the door frames identified by the risk assessment as containing lead-based paint or by replacing as many as possible of such door frames with door frames that are lead-based paint free up to the dollar limit set forth below in Paragraph 54;
 - d. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible other components of the Target Housing identified by the risk assessment as containing lead-based paint by replacing as many as possible of such other components with other components that are lead-based paint free up to the dollar limit set forth below in Paragraph 54;
 - e. Respondent should prepare and submit to EPA an occupant protection plan developed in accordance with 40 CFR Part 745.227(e)(5) and the *HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing*, U.S. Department of Housing and Urban Development (1997 Revision);

- f. Implement the “Post-Abatement Clearance Procedures” set forth at 40 C.F.R. Section 745.227(e)(8) to verify that the Window Replacement/Lead Abatement Tasks and, if applicable, Door Frame/Lead Abatement Tasks, have been completed fully (including any sampling and clean-up of any lead-contaminated dust or debris generated by the abatement work) and that, subject to the dollar limit set forth in Paragraph 54, below, the windows of the Target Housing have been replaced with windows that do not contain lead-based paint and, if applicable, the door frames do not contain lead-based paint;
 - g. Complete an “Abatement Report” and, if necessary, perform “Post-Abatement Work” and complete a “Post-Abatement Report” as set forth in 40 C.F.R. § 745.227(e)(10) documenting the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing;
 - h. Complete a “Project Completion Report” in accordance with Paragraph 61 of this CAFO; and
 - i. Send written notification to Pennsylvania Department of Labor and Industry identifying the projected start and completion date of the abatement project as required by Pennsylvania Department of Labor and Industry.
53. For the purposes of this CAFO, lead-based paint is defined as paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight as referenced in the definition for “Lead-based paint” in 40 C.F.R. § 745.223.
54. Respondent agrees to expend a minimum of Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) to complete the performance of the Lead-Based Paint Abatement Project in accordance with Paragraphs 51-64 of this CAFO (“Lead-Based Paint Abatement Project Cost”). Paragraph 60 of this CAFO contains a complete list of activities the costs of which may be applied to the Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) Lead-Based Paint Abatement Project Cost. If Respondent does not fully complete such tasks in accordance with Paragraphs 51-60 of this CAFO or, in the alternative, has not spent at least Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) on the Lead-Based Paint Abatement Project as determined by EPA in accordance with Paragraphs 62 through 64 of this CAFO, Respondent shall pay additional penalties in accordance with Paragraph 72, below.
55. Respondent is under no obligation to continue with replacing any windows or door frames once Respondent has demonstrated to EPA’s satisfaction, in conformance with Paragraphs 62 through 64, that Respondent has expended the sum of Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) on the Lead-Based Paint Abatement Project, including any projected post-abatement work, as set forth in Paragraphs 51 through 60.

56. Respondent shall provide a copy of this CAFO to the tenants of any Target Housing which is the subject of the Lead-Based Paint Abatement Project at least ten (10) days prior to the commencement of any work required to implement the Lead-Based Paint Abatement Project.
57. Respondent shall ensure that no child under the age of six and no pregnant woman is present in any Target Housing subject to the Lead-Based Paint Abatement Project during any work required to implement such Project and that no persons other than those performing the work are present in such Target Housing while such work is being performed.
58. Respondent shall pay all reasonable expenses associated with temporary relocation of tenants in accordance with Paragraph 57, above, in the event that such tenants must evacuate the Target Housing for a period of 24 hours or more to allow Respondent to perform any of the Lead-Based Paint Abatement Project tasks. Respondent may apply any reasonable expenses spent on providing the tenants with alternative housing towards the Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) Lead-Based Paint Abatement Project Cost referenced in Paragraph 54.
59. Respondent shall solicit bids for, provide funds for, and enter into such contracts as are necessary to ensure completion of the following Lead-Based Paint Abatement Project tasks in accordance with the schedule set forth below:
 - a. "Days" as used herein shall mean calendar days unless specified otherwise;
 - b. Within thirty (30) days of the effective date of this CAFO, Respondent shall enter into a contract with an independent third party to perform a Risk Assessment at the Target Housing identified in Paragraph 52.a., above;
 - c. Within sixty (60) days of the effective date of this CAFO, Respondent shall enter into a contract with an independent third party other than the third party that performed the risk assessment pursuant to Paragraph 59.b., above, to perform the Lead-Based Abatement Tasks set forth above in Paragraph 52., subject to the limitations described in Paragraph 55, above.
 - d. Within five (5) days after entering into a contract to perform any Lead-Based Abatement Tasks, Respondent shall send EPA a copy of such contract at the address set forth in Paragraph 74, below.
 - e. Within one-hundred twenty (120) days of the effective date of this CAFO, Respondent shall have completed the Lead-Based Abatement Tasks in accordance with Paragraph 51 through 60, above.

- f. Respondent shall submit written notification to EPA at the address set forth in Paragraph 74 of this CAFO within five (5) days of the completion of the Lead-Based Abatement Tasks.
- g. Within thirty (30) days after the completion of the Lead-Based Abatement Tasks, Respondent shall enter into a contract with an independent third party to implement the Post-Abatement Clearance Procedures set forth at 40 C.F.R. § 745.227(e)(8) to verify:
 - h.
 - i. that all sampling and clean-up of lead-contaminated dust and debris generated during the Lead-Based Abatement Tasks have been completed; and
 - ii. that dust levels for floor, interior window sill, and window trough are below 40, 250, and 400 ug/ft² thresholds, respectively.
- h. Within thirty (30) days after the completion of the Lead-Based Abatement Tasks, Respondent shall enter into a contract with an independent third party to complete an “Abatement Report” as set forth in 40 C.F.R. § 745.227(e)(10) (and, if necessary, a “Post-Abatement Report” as referenced below in Paragraph 59.n.) describing the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing.
- i. The Post-Abatement Clearance Procedures and the Abatement Report (and, if necessary, Post-Abatement Report) must be completed by persons who are unrelated to and completely independent from the individuals and/or business entities who perform any Lead-Based Abatement Tasks.
- j. Within five (5) days after entering into a contract(s) with an independent third party to perform the Post-Abatement Clearance Procedures and/or prepare an Abatement Report (and, if necessary, Post-Abatement Report), Respondent shall send to EPA at the address set forth in Paragraph 74 of this CAFO a copy of such contract(s) for the Post-Abatement Clearance Procedures and Abatement Report (and, if necessary, Post-Abatement Report).
- k. The Post-Abatement Clearance Procedures for the Lead-Based Paint Abatement Project must be completed within sixty (60) days after the completion of the Lead-Based Abatement Tasks.
- l. The Abatement Report shall be completed within thirty (30) days after the completion of the Post-Abatement Clearance Procedure tasks.

- m. Within five (5) days after receiving a copy of the Abatement Report, Respondent shall send a copy of that report to EPA at the address set forth in Paragraph 74 of this CAFO.
- n. If the Abatement Report indicates that any window that Respondent had attempted to replace or door frame that Respondent had attempted to replace or from which Respondent attempted to remove the lead-based paint pursuant to this CAFO still contains lead-based paint, Respondent shall be responsible for eliminating the lead-based paint in conformance with the requirements set forth in 40 C.F.R. Part 745, Subpart L (including any applicable post-abatement clearance procedures), within fifteen (15) days of receiving the Abatement Report. Respondent shall submit to EPA at the address set forth in Paragraph 74 of this CAFO a "Post-Abatement Report" prepared by in accordance with 40 C.F.R. § 745.227(e)(10) documenting and describing the performance of such Post-Abatement Work within fifteen (15) days after completing such Post-Abatement Work.
- o. Before initiating any Lead-Based Paint Project tasks described herein, Respondent shall obtain, at his own expense, all permits, licenses, and other forms of approval or authorization necessary to conduct the Lead-Based Paint Abatement Project from all relevant federal, state, and local agencies or departments.

60. Respondent may apply any funds spent on the Risk Assessment, Lead Abatement Tasks, Post-Abatement Clearance Procedures, Abatement Report, Post-Abatement Work, Post-Abatement Report, Project Completion Report, and any other task which EPA determines in writing is necessary for the implementation of the Lead-Based Paint Abatement Project, towards the Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) Lead-Based Paint Abatement Project Cost referenced in Paragraph 55. Such costs may also include funds reasonably expended by Respondent on providing tenants of the Target Housing with alternative housing as set forth in Paragraph 58 of the CAFO. ***However, regardless of whether Respondent has met or exceeded the minimum dollar expenditure set forth in Paragraph 54, Respondent must complete the Post-Abatement Clearance Procedures, Abatement Report, Post-Abatement Work, Post-Abatement Report, and Project Completion Report as required by Paragraphs 59 and 61 .***

Project Completion Report

61. Within sixty (60) days of Respondent's receipt of the Abatement Report or the Post-Abatement Report, if applicable, but not later than three-hundred (300) days after the effective date of this CAFO, Respondent shall submit to EPA a "Project Completion Report" for the Lead-Based Paint Abatement Project. The Project Completion Report shall contain the following:

- a. A detailed description of the Lead-Based Paint Abatement Project as implemented;
- b. A description of any problems encountered in implementing the Lead-Based Paint Abatement Project and any solutions thereto;
- c. A report (certified in accordance with the Certification Provision of Paragraph 73, below) of the itemized costs of work performed in implementing the Lead-Based Paint Abatement Project documented by copies of all invoices, contracts, canceled checks, and payment receipts relevant to the implementation of the Lead-Based Paint Abatement Project;
- d. A certification by Respondent, in accordance with the Certification Provision of Paragraph 73, that the Lead-Based Paint Abatement Project has been implemented in accordance with the terms of this CAFO.

EPA Review of Project Completion Report

62. Following receipt of the Project Completion Report, EPA will do one of the following:
 - a. If EPA determines that the Lead-Based Paint Abatement Project was conducted in accordance with the terms of this CAFO, EPA will issue a written notification to Respondent accepting the Project Completion Report.
 - b. If EPA determines that the Lead-Based Paint Abatement Project was not conducted in accordance with the terms of this CAFO within the time provided for the completion of the Lead-Based Paint Abatement Project set forth in Paragraphs 51 through 60, EPA will issue a written notification to Respondent rejecting the Project Completion Report, providing EPA's reasons therefor, identifying the deficiencies in the Project Completion Report and granting Respondent a reasonable time from receipt of such notice within which to correct any deficiencies. In the event Respondent fails to correct the identified deficiencies EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Paragraph 72 of this CAFO.
63. If EPA issues a written notice of disapproval rejecting a Project Completion Report, EPA shall grant Respondent the opportunity to object in writing to such notification within seven (7) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on the matter in dispute. If agreement cannot be reached on any such matter within such thirty (30) day period, EPA shall provide a written statement of its

decision and the rationale therefor to Respondent, which decision shall be final and binding upon Respondent.

64. In the event EPA determines after the expiration of the 30-day dispute resolution period that the Lead-Based Paint Abatement Project has not been completed as specified herein or has issued a written notice of disapproval for which a timely objection has not been filed by Respondent, additional penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 72 of this CAFO. The submission of an unacceptable Project Completion Report shall be the equivalent of the failure to submit a timely Project Completion Report for purposes of the additional penalties set forth in Paragraph 72 of this CAFO, except that any additional penalties pursuant to such paragraph shall not run during the pendency of the procedure set forth in Paragraph 63, and shall instead run from the date on which Respondent receives EPA's final written statement of its decision pursuant to this paragraph.

Satisfaction of Settlement Conditions

65. Payment of the penalty specified in Paragraph 43 of this CAFO, payment of any applicable interest and late payments as set forth in Paragraphs 44 through 49 of this CAFO, completion of the Lead-Based Paint Abatement Project in accordance with Paragraphs 51 through 61 of this CAFO, and payment of any additional penalties as set forth in Paragraph 72 of this CAFO for delay or non-performance of the Lead-Based Paint Abatement Project, shall constitute full and final satisfaction of Complainant's civil claims set forth in this CAFO.
66. A determination of compliance with the conditions set forth herein will be based upon, among other things, records, reports, and other documents submitted by Respondent to EPA and any inspections that EPA may perform.
67. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall issue a "Letter of Remittance" upon satisfaction of the Lead-Based Paint Abatement Project conditions which shall state that Respondent has performed fully the Lead-Based Paint Abatement Project in accordance with this CAFO and paid all penalty amounts due pursuant to the terms of this CAFO.

Force Majeure

68. If any event occurs which causes or may cause delays in the completion of any of the deadlines set forth in Paragraphs 51 through 61 of this CAFO, Respondent shall notify EPA in writing within seven (7) days of when Respondent knew or should have known of the force majeure event, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall implement all

reasonable and feasible measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render Paragraphs 69 through 71, below, void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of time to fulfill any obligation under this CAFO affected by such incident.

69. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not or cannot be overcome by due diligence (*i.e.*, a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate in writing to such extension of time.
70. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by a force majeure, EPA, in its sole discretion, will notify Respondent in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondent's obligations under this CAFO and Respondent may be subject to the payment of additional penalties for such delays as described in Paragraph 72, below.
71. The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased costs or expenses associated with the implementation of actions required by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time, hereunder.

**Failure to Satisfactorily Complete the Lead-Based Paint Abatement Project/
Delay in Performance**

72. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the Lead-Based Paint Abatement Project described herein, or if the actual expenditures for the Lead-Based Paint Abatement Project do not equal or exceed Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00), Respondent shall be liable for additional penalties, as provided below:
 - a. Except as provided in Paragraph 72.b., below, if the Lead-Based Paint Abatement Project has not been satisfactorily completed pursuant to Paragraphs 51 through 61, above, Respondent shall pay an additional penalty up to Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00).
 - b. If the Lead-Based Paint Abatement Project has not been satisfactorily completed, but Respondent has:
 - i. Made timely and good faith efforts to complete the project; and
 - ii. Certified, with supporting documentation, that at least 90% of the

amount of money which was required to be spent on the Lead-Based Paint Abatement Project was expended on the Lead-Based Paint Abatement Project, Respondent shall not pay any additional penalty.

- c. If the Lead-Based Paint Abatement Project is completed satisfactorily and Respondent certifies, with supporting documentation, that at least 90% of the Lead-Based Paint Abatement Project Cost was expended on the Lead-Based Paint Abatement Project, Respondent shall not pay any additional penalty.
- d. If the Lead-Based Paint Abatement Project is completed satisfactorily, but Respondent has spent less than 90% of the Lead-Based Paint Abatement Project Cost which was required to have been spent on the Lead-Based Paint Abatement Project, Respondent shall pay an additional penalty calculated as follows:

\$10,156 - ("minus") the Actual Lead-Based Paint Abatement Project Expenditures = ("equals") Additional Penalty.
- e. If Respondent fails to complete the Lead-Based Paint Abatement Project tasks within the deadlines provided in Paragraphs 59 and 61, above, Respondent shall pay an additional penalty of One-Hundred Dollars (\$100) for each day beyond the deadline established for any such task.
- f. Notwithstanding the foregoing, in no event shall the total of actual Lead-Based Paint Abatement Project expenditures plus additional penalties under this section exceed Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00).
- g. In exercising its discretion or making determinations under this CAFO, EPA shall be reasonable considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CAFO, including the determinations as to whether the Lead-Based Paint Abatement Project has been completed satisfactorily, shall be at the sole discretion of EPA. Notwithstanding any other provision of this CAFO, no action or decision by EPA pursuant to this CAFO shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this CAFO. Except as provided in Paragraph 64, above, additional penalties as set forth herein shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity.
- h. Additional penalties shall become due and payable immediately upon

Respondent's receipt of a written demand by EPA for such penalties. The method of payment and the assessment of interest, administrative cost and late payment of penalties in connection with the payment of such additional penalties shall be in accordance with the requirements for the payment of a civil penalty addressed in this CAFO.

Certification

73. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CAFO shall be certified by Respondent. Such certification shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted to EPA under this certification. I believe that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information to EPA including the possibility of fine and/or imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Distribution of Reports

74. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CAFO shall be sent via overnight mail, or by hand as follows:

If to EPA:

Demian Ellis (3LC61)
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029, and

Louis F. Ramalho, Sr. Assistant Regional Counsel (3RC30)
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

If to Respondent:

Kurt A. Blake
29 E. Philadelphia St.
York, PA 17404

Other Applicable Laws

75. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon them by applicable federal, state or local laws and/or regulations.

No Releases

76. Nothing in this CAFO shall constitute or be construed as a release of Respondent from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CAFO for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazard at the Target Housing.

Liability of Complainant

77. Complainant shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent or his employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Lead-Based Paint Abatement Project, nor shall the Complainant be held out as a party to any contract entered into by Respondent in carrying out the terms of this CAFO.

Indemnification and Hold Harmless

78. Respondent agrees to indemnify and hold harmless Complainant, its agents, employees, and authorized representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out the terms of this CAFO.

No Reimbursements

79. Respondent certifies that he has not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses he incurs to fulfill the terms of this CAFO.
80. Respondent specifically agrees not to deduct for civil taxation purposes the civil penalty specified in this CAFO or the cost of any work done to implement the Lead-Based Paint Abatement Project up to the first Ten Thousand One Hundred Fifty-Six Dollars (\$10,156.00) of such work. Respondent understands that Complainant has based the settlement of this case on a proposed Lead-Based Paint Abatement Project cost projection

that has been calculated on an after-tax cost value. Were Respondent to have been authorized to take a tax deduction for this work, the minimum Lead-Based Paint Abatement Project Cost element of this settlement (\$10,156.00) would have been increased to include whatever tax savings may have accrued to Respondent.

Parties Bound

81. Respondent shall have sole responsibility for the legal obligation created by this CAFO to finance and enter into appropriate contracts to perform the Lead-Based Paint Abatement Project described herein. Any act by Respondent to transfer such responsibility shall constitute abandonment and cause Respondent to be liable for additional penalties as specified in Paragraph 72, above.

Distribution of CAFO

82. Respondent shall provide a copy of the CAFO to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by Respondent to conduct any portion of the Lead-Based Paint Abatement Project required to be conducted pursuant to this CAFO.

Public Statements by Respondent

83. Any public statement, oral or written, in print, film, or other media, made by Respondent in reference to the above Lead-Based Paint Abatement Project shall include language indicating that this project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency for alleged violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations.

Modification

84. The terms of this CAFO may be modified only by written agreement of the Parties and the approval of the Regional Administrator of EPA - Region III or his designee.

Access to Information

85. In addition to the information and documents otherwise required by this CAFO, Respondent shall provided to Complainant, upon written request, any and all information and/or documents in his possession, custody or control which relate to the Lead-Based Paint Abatement Project described herein including, but not limited to, operational logs, copies of waste manifests, the identity of transporter of wastes generated by the Lead-Based Paint Abatement Project, the identity of any contractors, subcontractors and supervisory personnel used, and information and documents concerning Respondent's compliance with state and local requirements. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of Complainant under any law or regulation.

86. Complainant and its employees and authorized representatives shall have the authority to enter and freely move about the location where any Lead-Based Paint Abatement Project is required to be performed pursuant to this CAFO, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CAFO; reviewing the progress of the Respondent in carrying out the terms of this CAFO; conducting such sampling, monitoring, or other tests as Complainant deems necessary to ensure compliance with the CAFO; and verifying the data submitted to Complainant by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the CAFO. Complainant may use a camera, recording, or other equipment to record its observations during such access.

Claim of Confidentiality

87. Respondent may make a claim of business confidentiality for any information provided to Complainant pursuant to this CAFO in the manner described in 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. Section 2.204(c)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by Complainant only in accordance with procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to Complainant, the submitted information may be made available to the public by Complainant without further notice to Respondent.

Reservation of Rights

88. Full payment of the civil penalty set forth in Paragraph 43 of this Consent Agreement, above, and performance of the Lead-Based Paint Abatement Project shall resolve only Respondent's liability for federal civil penalties for the specific violations alleged in this CAFO. 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. This CAFO is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law. In addition, Complainant reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

89. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for the violations alleged in this CAFO.

Other Applicable Laws

90. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on him by applicable federal, state or local law and/or regulations.

Effective Date

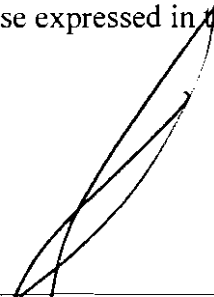
91. The effective date of this Consent Agreement and the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III or his designee, is filed with the Regional Hearing Clerk.

Entire Agreement

92. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.

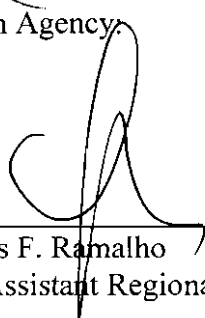
Respondent:

Date: 9/17/08

By: 
Kurt A. Blake

For the United States Environmental Protection Agency:

Date: 9/18/08

By: 
Louis F. Ramalho
Sr. Assistant Regional Counsel

I recommend that the Regional Administrator, or his designee, issue the Final Order attached hereto.

Date: 9/23/2008

By: *Nancy L. Dow for AF*
Abraham Ferdas, Director
Land and Chemicals Division

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 comply with the terms and conditions of the attached Consent Agreement, pay a civil penalty of One Thousand One Hundred Twenty-Eight Dollars (\$1,128.00), and perform the Lead-Based Paint Abatement Project as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/30/08

BY: Renee Sarajian
Renee Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

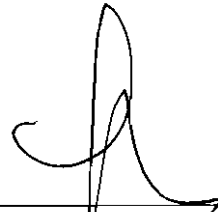
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. TSCA-03-2008-0416, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Overnight mail:

Kurt Blake, Esquire
Blake & Gross, L.L.C.
29 E. Philadelphia Street
York, PA 17401

9/30/08
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RECEIVED
U.S. EPA - REGION III
PHILADELPHIA, PA

2008 SEP 30 AM 10:52

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