



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

October 29, 2012

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL**

**Receipt No. 7009 1680 0000 7668 0677**

Mr. David B. Waxman  
Waxman Blumenthal LLC  
29225 Chagrin Boulevard  
Suite 350  
Cleveland, Ohio 44122

Consent Agreement and Final Order In the Matter of Fenton Investment Co.,  
Brantley, Inc., and Lewis A. Zipkin, Trustee. Docket No. TSCA-05-2013-0001

Dear Mr. Waxman:

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 October 29, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$885 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number **BD 2751347X001** and the docket number are written on both the transmittal letter and on the check. Payment is due by November 28, 2012 (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 "Meghan Dunn".

Meghan Dunn  
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**RECEIVED**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

OCT 29 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**In the Matter of:** ) **Docket No. TSCA-05-2013-0001**  
)  
**Fenton Investment Company, Brantley, Inc., and** )  
**Lewis A. Zipkin, Trustee,** )  
) **Proceeding to Assess a Civil**  
**Cleveland Heights, Ohio,** ) **Penalty Under Section 16(a) of the**  
) **Toxic Substances Control Act,**  
**Respondents.** ) **15 U.S.C. § 2615(a)**  
)

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**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 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 the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondents are Fenton Investment Company and Brantley, Inc., corporations authorized to conduct business in the State of Ohio, and Lewis A. Zipkin, Trustee.
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.

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

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

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, 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 the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints 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, the signatures and dates of signature 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 violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

17. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009 and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

2784 Euclid Heights Blvd.	11	9/10/2009
2764 Lancashire Road	1A	6/4 (no year listed)
2764 Lancashire Road	2A	6/7/2009
2764 Lancashire Road	3A	4/15/2010
2768 Lancashire Road	2A	5/18/2009
2783 Lancashire Road	14	5/6/2009
2096 Surrey Road	1	3/8/2010
2096 Surrey Road	4	2/19/2009
2100 Surrey Road	2	5/22/2009
2100 Surrey Road	4R	6/29/2010
2100 Surrey Road	6	5/1/2009

23. Each of the 22 contracts referred to in paragraph 22, above, covered a term of occupancy greater than 100 days.

24. Each Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because it offered the target housing referred to in paragraph 22, above, for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 22, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

26. EPA alleges that Fenton Investment Company and Brantley, Inc. failed to include a lead warning statement, before the lessee was obligated under a contract to lease the target housing, either within the contract or as an attachment to the contracts identified in paragraph 22, above, for the lease of Respondents’ properties at 2713 Hampshire Road, Unit 3 and 2378 Euclid Heights Blvd., Unit 2A, located in Cleveland Heights, Ohio, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. EPA alleges that Fenton Investment Company and Brantley, Inc. failed to include 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, before the lessee was obligated under a contract to lease the target housing, either within the contract or as an

within the contracts or as an attachment to the contracts identified in paragraph 22 for the lease of Respondents' properties at 2713 Hampshire Road, Unit 3, 2713 Hampshire Road, Unit 8, 2378 Euclid Heights Blvd., Unit 1B, 2378 Euclid Heights Blvd., Unit 2A, 2378 Euclid Heights Blvd., Unit 3A, 2378 Euclid Heights Blvd., Unit 3E, 2378 Euclid Heights Blvd., Unit 6E, 2784 Euclid Heights Blvd., Unit 11, 2764 Lancashire Road, Unit 1A, 2764 Lancashire Road, Unit 2A, 2764 Lancashire Road, Unit 3A, 2768 Lancashire Road, Unit 2A, 2783 Lancashire Road, Unit 14, 2096 Surrey Road, Unit 1, 2096 Surrey Road, Unit 4, 2100 Surrey Road, Unit 2, 2100 Surrey Road, Unit 4R, and 2100 Surrey Road, Unit 6, located in Cleveland Heights, Ohio, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Civil Penalty**

31. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$885. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondents, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondents' agreement to perform a supplemental environmental project. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

32. Within 30 days after the effective date of this CAFO, Respondents agree to pay an \$885 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

In addition, Respondents agree to pay a 6 percent per year penalty on any principal amount 90 days past due.

**Supplemental Environmental Project**

37. Respondents agree to complete a supplemental environmental project (SEP) designed to protect the public health by abating lead-based paint hazards.

38. Respondents agree to complete a lead-based paint hazard abatement project (“Hazard Abatement Project”) designed to protect tenants from potential lead-based paint hazards by abating certain lead-based paint hazards in one or more of Respondent’s Properties (the “SEP Properties”). This Hazard Abatement Project is a project to replace windows at one or more of the SEP Properties.

39. The Hazard Abatement Project shall 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 (2012 Edition), and executed by individuals certified to perform such work under state and local laws and regulations.

40. Respondents agree to perform standard lead clearance testing upon completion of the Hazard Abatement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition), and executed by individuals certified to perform such work under State of Ohio and local laws for the SEP Properties. The individuals conducting the Hazard Abatement Project and the individuals executing the standard lead clearance sampling shall not be paid or employed or, otherwise compensated by the individuals conducting the Hazard Abatement Project.

41. Respondents agree to spend at least \$7,970 to complete the Hazard Abatement Project. The money expended on the Hazard Abatement Project is not deductible for tax

five (45) days after completion of the Hazard Abatement Project. This report shall contain the following information:

- a. Detailed description of the Hazard Abatement Project as completed, which includes the sampling information contained in subparagraph b, below;
- b. A clearance sampling report for the SEP Properties, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. Itemized costs of goods and services used to complete the Hazard Abatement 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. Documentation that the individuals who performed the Hazard Abatement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local laws and regulations; and
- e. Certification that Respondents have completed the SEP in compliance with this CAFO.

47. Respondents agree to submit all notices and reports required by this CAFO by first class mail to Meghan Dunn, at the address provided in paragraph 33, above.

48. In each report that Respondents submit as provided by this CAFO, Respondents shall certify that the report is true and complete by including the following statement signed by one of its officers:

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.

49. If Respondents violate requirements of this CAFO relating to the Hazard Abatement Project and sampling, Respondents agree to pay stipulated penalties to EPA as follows:

Agency's enforcement action against Fenton Investment Company, Brantley, Inc., and Lewis A. Zipkin, Trustee for alleged violations of 40 C.F.R. Part 745."

54. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:
- a. Respondents agree to notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice shall describe the anticipated length of the delay, its cause(s), Respondents' past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondents must take all reasonable actions to avoid or minimize any delay. If Respondents fail to notify EPA according to this paragraph, Respondents will not receive an extension of time to complete the SEP.
  - b. If the parties agree that circumstances beyond the control of Respondents caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
  - c. If EPA does not agree that circumstances beyond the control of Respondents caused or may cause a delay in completing the SEP, EPA will notify Respondents in writing of its decision and any delays in completing the SEP will not be excused.
  - d. Respondents have the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.


#### **General Provisions**

55. This CAFO resolves Respondents' liability only for the violations alleged in the CAFO.
56. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law
57. This CAFO does not affect Respondents' responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.



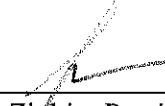
**Fenton Investment Company, Brantley, Inc., and Lewis A. Zipkin, Trustee, Respondents**

10/11/12  
Date

  
\_\_\_\_\_  
Lewis A. Zipkin, Trustee

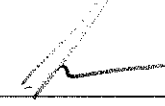
FENTON INVESTMENT COMPANY  
(an Ohio corporation)

10/11/12  
Date

  
\_\_\_\_\_  
Lewis A. Zipkin, President


BRANTLEY, INC  
(an Ohio corporation)

10/11/12  
Date

  
\_\_\_\_\_  
Lewis A. Zipkin, President

**United States Environmental Protection Agency, Complainant**

10/23/12  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division


**In the Matter of:**  
**Fenton Investment Company, Brantley, Inc., and Lewis A. Zipkin, Trustee**  
**Docket No. TSCA-05-2013-0001**

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**OCT 29 2012**  
**REGIONAL HEARING CLERK**  
**U.S. ENVIRONMENTAL**  
**PROTECTION AGENCY**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-25-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Fenton Investment Co., Brantley, Inc., and Lewis A. Zipkin, Trustee. This document was filed on October 29, 2012 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7668 0677, a copy of the original to the Respondent:

Mr. David B. Waxman  
Waxman Blumenthal LLC  
29225 Chagrin Boulevard,  
Suite 350  
Cleveland, Ohio 44122



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Mary McAuliffe, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

A handwritten signature in blue ink that reads "Frederick J. Brown".

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

Docket No. TSCA-05-2013-0001