

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

In the Matter of:

Willard D. Zirkle
Lora H. Zirkle
250 Norway Loop Road
Fairmont, WV 26554

Respondents,

231 Watson Avenue
Fairmont, WV 26554

238 Watson Avenue
Fairmont, WV 26554

229 Watson Avenue
Fairmont, WV 26554

826 Gaston Avenue
Fairmont, WV 26554

1629 Edgeway Drive
Fairmont, WV 26554

235 Watson Avenue
Fairmont, WV 26554

300 Hoult Road
Fairmont, WV 26554

503 Guffey Street
Fairmont, WV 26554

513 Coleman Avenue
Fairmont, WV 26554

Target Housing.

Docket No. TSCA-03-2018-0015

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CONSENT AGREEMENT

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CONSENT AGREEMENT

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 Willard D. Zirkle and Lora H. Zirkle, husband and wife (collectively “Respondents”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, 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. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondents alleged failure, as a seller and/or as a 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. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in the “Findings of Fact and Conclusions of Law” of this Consent Agreement.

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.

General Provisions

5. For purposes of this proceeding, Respondents admit to 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, Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondents agree 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, Respondents hereby expressly waive 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. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
10. Each party to this Consent Agreement shall bear their own costs and attorney's fees.
11. Respondents shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.

Findings of Fact and Conclusions of Law

12. Willard D. Zirkle and Lora H. Zirkle, husband and wife (collectively hereinafter "Respondents") are individuals residing at 250 Norway Loop Road, Fairmont, WV 26554.
13. At all times relevant to the violations in this CAFO, Respondents were the "sellers" and/or the "lessors", as these terms are defined in 40 C.F.R. § 745.103, of the residential real properties located at 231 Watson Avenue, Fairmont, WV, 238 Watson Avenue, Fairmont, WV, 229 Watson Avenue, Fairmont, WV, 826 Gaston Avenue, Fairmont, WV, 1629 Edgeway Drive, Fairmont, WV, 235 Watson Avenue, Fairmont, WV, 300 Hoult Road, Fairmont, WV, 503 Guffey Street, Fairmont, WV, and 513 Coleman Avenue, Fairmont, WV (collectively hereinafter referred to as "Target Housing").
14. The Target Housing was constructed prior to 1978.
15. At all times relevant to the violations alleged herein, the Target Housing was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.
16. At all times relevant to the violations alleged herein, the Target Housing contained a "residential dwelling" and was "target housing" within the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

A. 238 Watson Avenue, Apt. #2, Fairmont, WV (Lease Transaction #1)

17. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated April 1, 2014 (hereinafter referred to as the "Lease Transaction #1") with a "lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 238 Watson Avenue, Apt. #2, Fairmont, WV for an initial term commencing on April 1, 2014 and terminating on March 31, 2015.

18. At all times relevant to the violations alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
19. Lease Transaction #1 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
20. Lease Transaction #1 was not a “[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

B. 231 Watson Avenue, Apt. #2, Fairmont, WV (Lease Transaction #2)

21. Respondents entered into a written contract, dated August 7, 2014 (hereinafter referred to as the “Lease Transaction #2”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 231 Watson Avenue, Apt. #2, Fairmont, WV for an initial term commencing on August 7, 2014 and terminating on August 31, 2015.
22. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
23. Lease Transaction #2 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
24. Lease Transaction #2 was not a “[r]enewal of [an] existing lease . . . in which the lessors had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessors,” as provided at 40 C.F.R. § 745.101(d).

C. 229 Watson Avenue, Apt. #2, Fairmont, WV (Lease Transaction #3)

25. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated May 25, 2013 (hereinafter referred to as the “Lease Transaction #3”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 229 Watson Avenue, Apt. #2, Fairmont, WV for an initial term commencing on May 25, 2013 and terminating on May 31, 2014.
26. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).

27. Lease Transaction #3 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
28. Lease Transaction #3 was not a “[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

D. 826 Gaston Avenue, Apt. #2, Fairmont, WV (Lease Transaction #4)

29. Respondents entered into a written contract, dated October 30, 2013 (hereinafter referred to as the “Lease Transaction #4”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 826 Gaston Avenue, Apt. #2, Fairmont, WV for an initial term commencing on October 30, 2013 and terminating on October 31, 2014.
30. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
31. Lease Transaction #4 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
32. Lease Transaction #4 was not a “[r]enewal of [an] existing lease . . . in which the lessors had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessors,” as provided at 40 C.F.R. § 745.101(d).

E. 1629 Edgeway Drive, Fairmont, WV (Lease Transaction #5)

33. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated November, 15, 2013 (hereinafter referred to as the “Lease Transaction #5”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 1629 Edgeway Drive, Fairmont, WV for an initial term commencing on November 15, 2013 and terminating on November 30, 2014.
34. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
35. Lease Transaction #5 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

36. Lease Transaction #5 was not a “[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

F. 235 Watson Avenue, Apt. #3, Fairmont, WV (Lease Transaction #6)

37. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated September 1, 2014 (hereinafter referred to as the “Lease Transaction #6”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 235 Watson Avenue, Apt. #3, Fairmont, WV for an initial term commencing on September 1, 2014 and terminating on August 31, 2015.
38. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
39. Lease Transaction #6 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
40. Lease Transaction #6 was not a “[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

G. 235 Watson Avenue, Apt. #4, Fairmont, WV (Lease Transaction #7)

41. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated October 31, 2014 (hereinafter referred to as the “Lease Transaction #7”) with a “lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 235 Watson Avenue, Apt. #4, Fairmont, WV for an initial term commencing on October 31, 2014 and terminating on October 31, 2015.
42. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be “lead-based paint free by a certified inspector” as provided at 40 C.F.R. § 745.101(b).
43. Lease Transaction #7 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
44. Lease Transaction #7 was not a “[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

H. 300 Hoult Road, Apt. #3, Fairmont, WV (Lease Transaction #8)

45. Respondent, Willard D. Zirkle, individually, entered into a written contract, dated January 18, 2014 (hereinafter referred to as the "Lease Transaction #8") with a "lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 300 Hoult Road, Apt. #3, Fairmont, WV for an initial term commencing on January 18, 2014 and terminating on January 31, 2015.
46. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be "lead-based paint free by a certified inspector" as provided at 40 C.F.R. § 745.101(b).
47. Lease Transaction #8 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
48. Lease Transaction #8 was not a "[r]enewal of [an] existing lease . . . in which the lessor had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

I. 503 Guffey Street, Fairmont, WV (Lease Transaction #9)

49. Respondents entered into a written contract, dated June 28, 2014 (hereinafter referred to as the "Lease Transaction #9") with a "lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 503 Guffey Street, Fairmont, WV for an initial term commencing on June 28, 2014 and terminating on June 30, 2015.
50. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be "lead-based paint free by a certified inspector" as provided at 40 C.F.R. § 745.101(b).
51. Lease Transaction #9 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
52. Lease Transaction #9 was not a "[r]enewal of [an] existing lease . . . in which the lessors had previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessors," as provided at 40 C.F.R. § 745.101(d).

J. 513 Coleman Avenue, Fairmont, WV (Lease Transaction #10)

53. Respondents entered into a written contract, dated August 8, 2014 (hereinafter referred to as the "Lease Transaction #10") with a "lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the Target Housing at 513 Coleman Avenue, Fairmont, WV for an initial term commencing on August 8, 2014 and terminating on August 31, 2015.
54. At all times relevant to the violation alleged herein with respect to such Target Housing, such Target Housing had not been found to be "lead-based paint free by a certified inspector" as provided at 40 C.F.R. § 745.101(b).
55. Lease Transaction #10 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
56. Lease Transaction #10 was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

K. 231 Watson Avenue, Fairmont, WV (Sale Transaction #1)

57. Respondents entered into a "contract for the purchase and sale of residential real property," dated July 2, 2014 (hereinafter referred to as the "Sale Transaction #1") with a "purchaser," as these terms are defined at 40 C.F.R. § 745.103, to sale the Target Housing at 231 Watson Avenue, WV.
58. Sale Transaction #1 was not a "sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).
59. The transfer of such Target Housing under Sale Transaction #1 was consummated on September 3, 2014.

L. 238 Watson Avenue, Fairmont, WV (Sale Transaction #2)

60. Respondent, Willard D. Zirkle, individually, entered into a "contract for the purchase and sale of residential real property," dated July 7, 2014 (hereinafter referred to as the "Sale Transaction #2") with a "purchaser," as these terms are defined at 40 C.F.R. § 745.103, to sale the Target Housing at 231 Watson Avenue, WV.
61. Sale Transaction #2 was not a "sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).
62. The transfer of such Target Housing under Sale Transaction #2 was consummated on September 3, 2014.

Violations

Counts 1-9

Violations of 40 C.F.R. § 745.113(b)(1)

63. The allegations contained in Paragraphs 1 through 62, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
64. 40 C.F.R. § 745.113(b)(1) provides that each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: "Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."
65. Respondent, Willard D. Zirkle, individually, failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the contracts for Lease Transactions 1, 3, 5 through 7, and Respondents, collectively, failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the contracts for Lease Transactions 2, 4, 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, above.
66. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the Lease Transactions 1 through 7, and Lease Transactions 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, respectively above, constitutes 9 violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 10-18

Violations of 40 C.F.R. § 745.113(b)(2)

67. The allegations contained in Paragraphs 1 through 66, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
68. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based

paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

69. Respondent, Willard D. Zirkle, individually, failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Lease Transactions 1, 3, 5 through 7, and Respondents, collectively, failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Lease Transactions 2, 4, 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, above, as required by 40 C.F.R. § 745.113(b)(2).
70. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Lease Transactions 1 through 7, and Lease Transactions 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, respectively above, constitutes 9 violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 19-27

Violations of 40 C.F.R. § 745.113(b)(4)

71. The allegations contained in Paragraphs 1 through 70 above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
72. 40 C.F.R. § 745.113(b)(4) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
73. Respondent, Willard D. Zirkle, individually, failed to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Lease Transactions 1, 3, 5 through 7, and Respondents, collectively, failed to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Lease Transactions 2, 4, 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, above, as required by 40 C.F.R. § 745.113(b)(4).

74. Pursuant to 40 C.F.R. §745.118(e), Respondents' failure to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Lease Transactions 1 through 7, and Lease Transactions 9 and 10, described in Paragraphs 17 through 44 and Paragraphs 49 through 56, respectively above, constitutes 9 violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 28-29

Violations of 40 C.F.R. § 745.113(a)(1)

75. The allegations contained in Paragraphs 1 through 74, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
76. 40 C.F.R. § 745.113(a)(1) provides that each contract to sell target housing shall include, as an attachment, a Lead Warning Statement consisting of the following language: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduce intelligent quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."
77. Respondents failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(a)(1), either as an attachment to, or within, the contracts for Sale Transaction 1 and Respondent, Willard D. Zirkle, individually, failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(a)(1), either as an attachment to, or within, the contract for Sale Transaction 2 described in Paragraphs 57 through 62, respectively above.
78. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(a)(1), either as an attachment to, or within, the Sale Transactions 1 and 2 described in Paragraphs 57 through 62, respectively above, constitutes 2 violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 30-31

Violations of 40 C.F.R. § 745.113(a)(2)

79. The allegations contained in Paragraphs 1 through 78, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

80. 40 C.F.R. § 745.113(a)(2) provides, in relevant part, that each contract to sell target housing shall include as an attachment a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.
81. Respondents failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being sold or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Sale Transaction 1 and Respondent, Willard D. Zirkle, individually, failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being sold or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Sale Transaction 2 described in Paragraphs 57 through 62, respectively above, as required by 40 C.F.R. § 745.113(a)(2).
82. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being sold or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, the Sale Transactions 1 and 2 described in Paragraphs 57 through 62, respectively above, constitutes 2 violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 32-33

Violations of 40 C.F.R. § 745.113(a)(4)

83. The allegations contained in Paragraphs 1 through 82 above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
84. 40 C.F.R. § 745.113(a)(4) provides, in relevant part, that each contract to sell target housing shall include as an attachment a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
85. Respondents failed to include a statement by the purchaser affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Sale Transactions 1 and Respondent, Willard D. Zirkle, individually, failed to include a statement by the purchaser affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Sale

Transaction 2 described in Paragraphs 57 through 62, respectively above, as required by 40 C.F.R. § 745.113(a)(4).

86. Pursuant to 40 C.F.R. §745.118(e), Respondents' failure to include a statement by the purchaser affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, the Sale Transactions 1 and 2 described in Paragraphs 57 through 62, respectively above, constitutes 2 violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 34-35

Violations of 40 C.F.R. § 745.113(a)(5)

87. The allegations contained in Paragraphs 1 through 86 above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
88. 40 C.F.R. § 745.113(a)(5) provides, in relevant part, that each contract to sell target housing shall include as an attachment a statement by the purchaser that he/she has either: (i) received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a); or (ii) waived the opportunity.
89. Respondents failed to include a statement by the purchaser that he/she has either: (i) received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a); or (ii) waived the opportunity, either as an attachment to, or within, the Sale Transaction 1 and Respondent, Willard D. Zirkle, individually, failed to include a statement by the purchaser that he/she has either: (i) received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a); or (ii) waived the opportunity, either as an attachment to, or within, the Sale Transaction 2 described in Paragraphs 57 through 62, respectively above, as required by 40 C.F.R. § 745.113(a)(5).
90. Pursuant to 40 C.F.R. §745.118(e), Respondents' failure to include a statement by the purchaser that he/she has either: (i) received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a); or (ii) waived the opportunity, either as an attachment to, or within, the Sale Transactions 1 and 2 described in Paragraphs 57 through 62, respectively above, constitutes 2 violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Civil Penalty

91. Respondents agree to pay the amount of Forty Thousand Six Hundred Forty-Nine Dollars (\$40,649) 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 Consent Agreement. Such civil penalty amount shall become due and payable immediately upon Respondents' receipt of a true and correct copy of this CAFO. If Respondents pay the entire penalty of \$40,649.00 within thirty (30) calendar days of the

date on which this CAFO is mailed or hand-delivered to Respondents, no interest will be assessed against the Respondents pursuant to 40 C.F.R. § 13.11(a)(1).

92. 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, with specific reference to EPA's *Section 1018 Disclosure Rule Final Enforcement Response Policy ("Final ERP")*, dated December 2007. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the July 27, 2016 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*, including the *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule* dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.

93. Respondents shall pay the civil penalty set forth in Paragraph 91, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:

A. All payments by Respondents shall reference each Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2018-0015;

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 to:

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

Contact: Craig Steffen 513-487-2091

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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
US 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 No. = 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: John Schmid (202) 874-7026 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

A copy of Respondents' check or a copy of Respondents' electronic transfer shall be sent simultaneously to:

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

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

94. 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. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
95. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondents. 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).
96. 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.

97. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

Notice of Action to the State of West Virginia

98. EPA has given the State of West Virginia prior notice of the issuance of this CAFO.

Effect of Settlement

99. 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 the "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.

Other Applicable Laws

100. Nothing in this CAFO shall relieve Respondents of their obligation to comply with all applicable federal, state, and local laws and regulations.

Certification of Compliance

101. Each Respondent certifies to Complainant, upon investigation, to the best of their knowledge and belief, that it is currently in compliance with the provisions of TSCA, the RLBPHRA and 40 C.F.R. Part 745, Subpart F.

Reservation of Rights

102. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in the "Findings of Fact and Conclusions of Law" herein. EPA reserves the right to commence action against any person, including each 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.

Parties Bound

103. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA and each Respondent, and their successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of each Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to legally bind each Respondent to the terms and conditions of this Consent Agreement and Final Order.

Effective Date

104. 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.

Entire Agreement

105. 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.

For Respondents:

Date: October 27, 2017

By: Willard D. Zirkle
Willard D. Zirkle

By: Lora H. Zirkle
Lora H. Zirkle

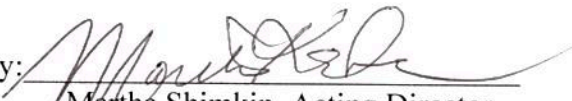
For the United States
Environmental Protection Agency:

Date: 10/30/17

By: Louis F. Ramalho
Louis F. Ramalho
Sr. Assistant Regional Counsel

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

Date: 11-28-2017

By: 
Martha Shimkin, Acting Director
Land and Chemicals Division

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

In the Matter of:

Willard D. Zirkle
Lora H. Zirkle
250 Norway Loop Road
Fairmont, WV 26554

Respondents,

231 Watson Avenue
Fairmont, WV 26554

238 Watson Avenue
Fairmont, WV 26554

229 Watson Avenue
Fairmont, WV 26554

826 Gaston Avenue
Fairmont, WV 26554

1629 Edgeway Drive
Fairmont, WV 26554

235 Watson Avenue
Fairmont, WV 26554

300 Hault Road
Fairmont, WV 26554

503 Guffey Street
Fairmont, WV 26554

513 Coleman Avenue
Fairmont, WV 26554

Target Housing.

Docket No. TSCA-03-2018-0015

FINAL ORDER

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FINAL ORDER

The Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III and Respondents, Willard D. Zirkle and Lora H. Zirkle, have 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 into this Final Order as if set forth fully herein.

WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Paint Disclosure Act"), 42 U.S.C. §§ 4851 *et seq.* and 40 C.F.R. Part 745, Subpart F, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein 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 Forty Thousand Six Hundred Forty-Nine Dollars (\$40,649), and comply with the terms and conditions of the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the EPA Regional Hearing Clerk.

Date: Nov. 30, 2017



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA - Region III


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, a true and correct copy of the attached Consent Agreement and Final Order, Docket No. TSCA-03-2018-0015, was filed today with the Regional Hearing Clerk and copy sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

JC AMOS, ESQUIRE
PO Box 3040
1414 Country Club Road
Fairmont, WV 26554
304 368 1000
Fax: 304 363 1143
jca@caalegal.com

Date

12/4/17



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

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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Willard D. Zirkle and Lora H. Zirkle
Docket No: TSCA-03-2018-0015

FROM: Mary B. Coe
Regional Counsel (3RC00)
Martha Shimkin, Acting Director
Land and Chemicals Division (3LC00)

TO: Joseph J. Lisa
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order (“CAFO”) have been negotiated pursuant to 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”), 40 C.F.R. Part 22, specifically including 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

The CAFO resolves violations by Willard D. Zirkle and Lora H. Zirkle, husband and wife, (“Respondents”) of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d *et seq.*, 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. Respondents were the “lessors” and “sellers” of “target housing” as these terms are defined at 40 C.F.R. § 745.103, of pre-1978 residential rental property (“Target Housing”) during all times relevant to the alleged violations addressed in the Consent Agreement.

The litigation team calculated a civil penalty of Forty Thousand Six Hundred Forty-Nine Dollars (\$40,649.00) in accordance with the statutory factors 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 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, and with EPA’s *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* (“Section 1018 ERP”), dated December 2007. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, including the *Transmittal of the 2017 Annual*

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Civil Monetary Penalty Information Adjustment Rule dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.

We recommend that you sign the attached Final Order assessing in civil penalty in the amount of Forty Thousand Six Hundred Forty-Nine Dollars (\$40,649.00) against Respondents. After you execute the Final Order, please return the documents to Louis F. Ramalho of the Office of Regional Counsel for further processing.

Attachments

cc: JC AMOS, ESQUIRE
PO Box 3040
1414 Country Club Road
Fairmont, WV 26554
304 368 1000
Fax: 304 363 1143
jca@caalegal.com