



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 22 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Walter E. Brock, Jr.  
Attorney at Law  
Young, Moore and Henderson, P.A.  
3101 Glenwood Avenue  
Raleigh, North Carolina 27612-5096

Re: David Harvey  
Ratified Consent Agreement and Final Order  
Docket No. TSCA-04-2012-2602(b)

Dear Mr. Brock:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Please inform your client that payment is required in accordance with Section V of the CAFO and the penalty information along with payment instructions are listed there.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions about this matter or the company's compliance status in the future, please contact Ms. Elizabeth Wilde of the EPA Region 4 staff at (404) 562-8998 or [wilde.liz@epa.gov](mailto:wilde.liz@epa.gov).

Sincerely,

A handwritten signature in black ink that reads "Anthony G. Toney".

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures  
cc: (David Harvey)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2013 MAY 22 AM 7:38  
HEARING CLERK

In the Matter of: )  
 )  
David Harvey )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: TSCA-04-2012-2602(b)

CONSENT AGREEMENT AND FINAL ORDER

1. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) is vested in the Administrator of the United States Environmental Protection Agency. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Director of the Air, Pesticides, and Toxics Management Division, by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. In accordance with 40 C.F.R. § 22.3(a), the Complainant in this matter is the Director of the Air, Pesticides, and Toxics Management Division. Respondent is David Harvey, a resident of North Carolina and the owner of rental housing in North Carolina.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. The Administrator of the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, also known as Title X of the Housing and Community Development Act of 1992. Pursuant to Title X, it is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with a provision of Title X or any rule or order issued under Title X.
4. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, the penalty for each violation of Title X of TSCA shall not exceed \$10,000. The Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation of Title X occurring after January 30, 1997, through January 12, 2009, is \$11,000 and for each violation occurring after January 12, 2009, the maximum penalty is \$16,000.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Elizabeth Wilde  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8998.

### **III. Specific Allegations**

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located in Raleigh, North Carolina. These residential units are "target housing," as defined at 40 C.F.R. § 745.103.
7. Based on information obtained by the EPA on or about February 24, 2009, relating to Respondent's contracts to lease its target housing described above, the EPA alleges that Respondent violated Section 409 of TSCA and 40 C.F.R. Part 745, Subpart F as follows:
  - a. Pursuant to 40 C.F.R. § 745.107(a)(1), a Lessor shall provide the Lessee(s) an EPA-approved lead hazard information pamphlet before the Lessee(s) is obligated under any contract to lease target housing. Respondent failed to provide Lessee(s) an EPA-approved lead hazard information pamphlet in at least one lease.
  - b. Pursuant to 40 C.F.R. § 745.107(a)(2), a Lessor shall disclose to the Lessee(s) the presence of any known lead-based paint and/or lead-based paint hazards in the target housing. Respondent failed to disclose to the Lessee(s) the presence of any known lead-based paint in at least one lease.
  - c. Pursuant to 40 C.F.R. § 745.107(a)(3), a Lessor shall disclose to each Agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, and the existence of any available records or reports pertaining to lead-based paint. Respondent failed to disclose to the Agent the presence of any known lead-based paint and the existence of any records or reports in at least one lease.

- d. Pursuant to 40 C.F.R. § 745.107(a)(4), a Lessor shall provide to the Lessee(s) any records or reports available to the Lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing. Respondent failed to provide to the Lessee(s) any records or reports in at least one lease.
- e. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment to or within the contract, the Lead Warning Statement. Respondent failed to include an appropriate statement in at least one lease.
- f. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment to or within the contract, 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. Respondent failed to include an appropriate statement in at least one lease.
- g. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment to or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information, or an indication that no such list exists. Respondent failed to include the appropriate information in at least one lease.
- h. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include in the contract for lease a statement by the Lessee(s) affirming receipt of the information. Respondent failed to include the appropriate information in at least one lease.

- i. Pursuant to 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include in the contract for lease signatures of the Lessor, Agent, and Lessee(s) certifying to the accuracy of their statements, as well as dates. Respondent failed to include the appropriate information in at least one lease.
- j. Pursuant to 40 C.F.R. § 745.113(c)(1), a Lessor shall retain a copy of the completed disclosure records for no less than three years from the completion date of the lease. Respondent failed to retain a copy of the completed disclosure records.

#### **IV. Consent Agreement**

8. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
9. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
10. Respondent consents to the assessment of the penalty proposed by the EPA, agrees to pay the civil penalty and has performed a Supplemental Environmental Project as set forth in this CAFO.
11. Respondent completed a Supplemental Environmental Project consisting of lead hazard remediation work at target housing rental properties he owns and submitted reports and receipts documenting costs of One Hundred and Five Thousand, Nine Hundred and Ninety Six Dollars, (\$105,996),
12. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F.
13. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United

States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

14. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

**V. Final Order**

15. Respondent is assessed a civil penalty of **ELEVEN THOUSAND FIVE HUNDRED AND FORTY SIX DOLLARS (\$11,546)** which shall be paid within thirty (30) days of the effective date.
16. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America."

**The Respondent shall note on the face of the check the Respondent's Name and the Docket Number associated with this CAFO.**

The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service:

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

Other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.) using the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101  
Contact Person: Natalie Pearson - (314) 418-4087.

17. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Elizabeth Wilde  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

18. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
19. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts.



In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

20. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
21. This CAFO shall be binding upon the Respondent, its successors and assigns.
22. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.


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**VI. Effective Date**

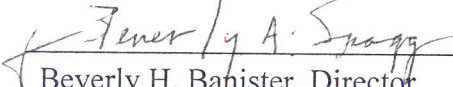
23. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**


**Respondent:** David Harvey  
**Docket No.:** TSCA-04-2012-2602(b)

By:  Date: December 17, 2012  
Name: David H. Harvey  
Title: \_\_\_\_\_

**Complainant:** U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 5/8/2013  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 20<sup>th</sup> day of May, 2012.

By:   
Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of David Harvey, Docket Number: TSCA-04-2012-2602(b), to the addressees listed below:

David Harvey  
c/o Walter E. Brock, Jr.  
Attorney At Law  
Young Moore and Henderson, P.A.  
3101 Glenwood Avenue, # 200  
Raleigh, North Carolina 27612-5096

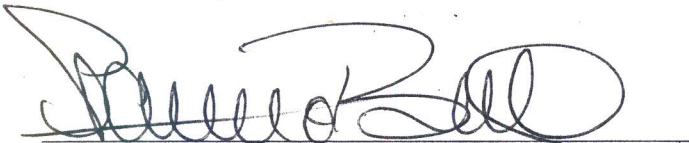
(via Certified Mail, Return Receipt Requested)

Elizabeth Wilde  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Robert Caplan, Senior Attorney  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

(via EPA's internal mail)



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9511

Date: 5-22-13