



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAY 12 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0182 9450

Mr. Joseph Pedaline  
216 Lora Avenue  
Youngstown, Ohio 44505

Joseph Pedaline, Youngstown, Ohio  
**TSCA-05-2009-0008**

Dear Mr. Pedaline:

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 May 12, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$500.00 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the number **BD 2750947X008** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 11, 2009, (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 "Estrella Calvo".

Estrella Calvo  
Pesticides and Toxic Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED

MAY 12 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )

Joseph Pedaline )  
Youngstown, Ohio )

Respondent. )  
\_\_\_\_\_ )

Docket No.  
TSCA-05-2009-0008

Proceeding to Assess a Civil  
Penalty Under Section 16(a) of the  
Toxic Substances Control Act,  
15 U.S.C. § 2615(a)

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. Respondent is Joseph Pedaline, a sole proprietor doing business in the State of Ohio.
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.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines target housing as 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.

12. 40 C.F.R. § 745.103 defines “lessor” as 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.

13. 40 C.F.R. § 745.103 defines “lessee” as 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 nonprofit organizations.

14. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing 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, agent, 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. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the EPA Administrator to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

18. Between November 17, 2003 and September 15, 2004, Respondent owned and/or

managed residential rental properties in Youngstown, Ohio at 581 Early, 223 Lora, 227 Lora, 229 Lora, 231 Lora, 232 Lora, 234 Lora, 257 Fairgreen, 260 Fairgreen, 262 Fairgreen, 1442 Ohio, 1444 Ohio, 1446-1448 Ohio, 1501 Ohio, 22 South West (Respondent's properties).

19. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On the following dates, Respondent, either directly or through his authorized agent, entered into the following 27 lease agreements (contracts) with individuals for the lease of

Respondent's properties:

<b>Address</b>	<b>Apartment No.</b>	<b>Date of Lease</b>
581 Early		05/12/2004
223 Lora		06/28/2004
227 Lora		09/01/2004
229 Lora		05/07/2004
231 Lora		05/18/2004
231 Lora		06/30/2004
232 Lora		04/23/2004
234 Lora	#1	08/01/2004
234 Lora	#2	06/01/2004
234 Lora	#3	04/23/2004
234 Lora	#3	06/16/2004
257 Fairgreen		09/01/2004
260 Fairgreen		09/01/2004
262 Fairgreen		11/17/2003
262 Fairgreen		09/01/2004
1442 Ohio		06/08/2004
1444 Ohio		12/17/2003
1446 Ohio		12/11/2003
1446 Ohio		06/16/2004
1446 Ohio		09/15/2004
1447 Ohio	#2	09/01/2004
1447 Ohio	#3	05/29/2004
1448 Ohio		04/24/2004
1448 Ohio	#2	01/08/2004
1501 Ohio		07/01/2004
1501 Ohio		08/01/2004
22 South West	B	08/11/2004

21. Each of the 27 contracts referred to in paragraph 20, above, covered a term of occupancy greater than 100 days.

22. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 20, above, for lease.

23. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 20, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

24. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for each lease transaction identified in paragraph 20, with the exception of leases executed on June 30, 2004 and June 16, 2004, for 231 Lora and 234 Lora, #3, respectively, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondent 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, either within the contract or as an attachment to the contract for each lease transaction identified in paragraph 20, with the exception of the lease executed on June 16, 2004, for 234 Lora, #3, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for each lease transaction identified in paragraph 20, with the

exception of the lease executed on June 16, 2004, for 234 Lora, #3, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent failed to include 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* required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for each lease transaction identified in paragraph 20, with the exception of leases executed on June 30, 2004 and June 16, 2004, for 231 Lora and 234 Lora, #3, respectively, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent failed to include the signatures of the lessor, agent, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract for each lease transaction identified in paragraph 20, with the exception of the lease executed on June 30, 2004, for 231 Lora, 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**

29. 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 \$500. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent's agreement to perform a supplemental environmental project. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$500 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the

“Treasurer, United States of America,” to:

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

31. A transmittal letter stating Respondent’s name, the case title, Respondent’s complete address, the case docket number and the billing document (BD) number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Estrella Calvo (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Mary McAuliffe (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay the civil penalty timely or any stipulated penalties due under paragraph 48, below, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the

payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **Supplemental Environmental Project**

35. Within eight months after entry of this CAFO, Respondent must complete three supplemental environmental projects (SEPs), each in the form of a Window Replacement Project (lead-based paint abatement) and post-abatement clearance testing designed to protect tenants from lead-based paint hazards by replacing a total of 71 windows at 3 properties in Youngstown, Ohio (21 windows at 581 Early, 20 windows at 583 Early, and 30 windows at 1447-1449 Ohio) with new vinyl windows, such that all painted friction and impact surfaces will be replaced or covered by the new window. For any remaining interior or exterior painted wood trim, sills, or window casing on the 71 windows at the three properties, Respondent will wet-scrape all paint, prepare the surface, prime and then paint with a durable high grade paint in accordance with Chapters 11, 12, and 13 of the “HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.”

36. Each of the three properties must pass post-abatement clearance testing to confirm a lead-safe condition of the premises at the completion of each project.

37. Respondent must spend at least \$26,300 to complete all three SEPs and post-abatement clearance testing.

38. Respondent shall not use any HUD assistance, including all HUD grants, as well as Community Development Block Grants or any funds from any state or local agency, including but not limited to the Ohio Department of Health’s Childhood Lead Poisoning Prevention

Program, to perform the \$26,300 of lead-based paint abatement and post-abatement clearance testing.

39. All lead-based paint abatement and post-abatement clearance testing must be executed by individuals certified and licensed to perform such work under federal, state, and local laws and regulations. The individual or company executing the post-abatement clearance testing must not be paid or employed or, otherwise compensated by the individuals conducting the lead-based paint abatement component of the SEP.

40. Respondent certifies that he is not required to perform or develop the SEPs by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date he signs this CAFO. Respondent further certifies that he has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

41. Respondent must conduct the SEPs according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* and the State of Ohio's Administrative Code, Chapter 3701-32, *Lead Hazard Abatement and Inspection Activities*, unless otherwise specifically provided in this CAFO.

42. EPA may inspect the target housing at 581 Early, 583 Early, and 1447-1449 Ohio any time to monitor Respondent's compliance with this CAFO's SEP requirements. Any access to the target housing will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

43. Respondent must submit the reports required by the scope of work to EPA within eight months after entry of this CAFO.

44. Respondent must submit a SEP completion report to EPA for *each* property identified in paragraph 35, above, within eight months following entry of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Post-abatement clearance inspection report identifying visual clearance results, dust sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. Itemized costs of goods and services used to complete the lead-based paint abatement documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Itemized costs of goods and services used to complete the post-abatement clearance inspection documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- e. Documentation that the individuals who performed the lead-based paint abatement and the post-abatement clearance inspection are certified to perform such work in accordance with federal, state and local laws and regulations;
- f. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- g. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

45. Respondent must submit all notices and reports required by this CAFO by first class mail to Estrella Calvo of the Pesticides and Toxics Compliance Section at the address provided in paragraph 31, above.

46. In each report that Respondent submits as provided by this CAFO, Respondent must certify that the report is true and complete by including the following signed statement:

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; it 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.

47. Following receipt of each SEP completion report as described in paragraph 44, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 49, below.

48. If EPA exercises option b in paragraph 47, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEPs as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 49, below.

49. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 37, above, Respondent must pay a stipulated penalty equal to the difference between the amount he spent on the SEPs and the amount set forth in paragraph 37;
- b. If Respondent has completed the SEPs, but the SEPs are not satisfactory, Respondent must pay \$15,000, in addition to any penalty required under subparagraph a, above;
- c. If Respondent halts or abandons work on the SEPs, the Respondent must pay a stipulated penalty of \$15,000, in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEPs or the date performance ceases, whichever is earlier;

- d. If Respondent fails to ensure and document that the lead-based paint abatement for the properties identified in paragraph 35, above, are executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, he shall pay a stipulated penalty of \$15,000, in addition to any penalty required under subparagraph a, above;
- e. If Respondent fails to ensure and document that the post-abatement clearance inspections for the properties identified in paragraph 35, above, are executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, he shall pay a stipulated penalty of \$15,000, in addition to any penalty required under subparagraph a, above; and
- f. If Respondent fails to submit timely the SEP completion reports or fails to submit timely any other reports required in paragraph 44, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$26,300.

50. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

51. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 31, above, and will pay interest, handling charges, and penalties on overdue amounts as specified in paragraph 34, above.

52. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

53. Any public statement that Respondent makes referring to the SEPs must include the following language, "Joseph Pedaline undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Joseph Pedaline for violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992."

**General Provisions**

54. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

57. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

58. The terms of this CAFO bind Respondent, and his successors and assigns.

59. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorney's fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

**Joseph Pedaline, Respondent**

2/10/09  
Date

Joseph Pedaline  
Joseph Pedaline

**United States Environmental Protection Agency, Complainant**

5/8/09  
Date

Wilke H. Harris  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

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PROTECTION AGENCY

**In the Matter of:**  
**Joseph Pedaline**  
**Docket No. TSCA-05-2009-0008**

**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.

5/11/09  
Date

Walter W. Kavalich  
Bharat A. Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Joseph Pedaline, Youngstown, Ohio, was filed on May 12, 2009, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7001 0320 0006 0182 9450 to:

Mr. Joseph Pedaline  
216 Lora Avenue  
Youngstown, Ohio 44505

and forwarded intra-Agency copies to:

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

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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