



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
JAN 05 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7644 8598 / 7009 1680 0000 7644 8604

Mr. Christopher Day  
589 Sunset Road  
Winnetka, Illinois 60093

Mr. Christopher Day and RE/MAX Platinum TSCA-05-2012-0008

Dear Mr. Day:

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 January 5, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$18,963.00 is to be paid in the manner described in paragraphs 32 thru 33. Please be certain that the number **BD 2751247X004** and the docket number are written on both the transmittal letter and on the check. Payment is due by February 4, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morris".

Julie Morris  
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volek, Cincinnati Finance/MWD (w/Encl.)  
Gaylene Vasaturo, Counsel for Complainant/C-14J

RECEIVED

JAN - 5 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
)  
Mr. Christopher Day )  
Winnetka, Illinois )  
RE/MAX Platinum )  
Hartland, Michigan )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2012-0008  
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 Commencing and Concluding the Proceeding

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 Mr. Christopher Day, residing in Winnetka, Illinois, and RE/MAX Platinum, a corporation with a place of business located at 11500 Highland Road, Hartland, Michigan.

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. Respondents consent 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. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their 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 their 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. 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, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

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

18. At all times relevant to this CAFO, Christopher Day, Winnetka, Illinois, owned a

single-family dwelling at 319 E. Commerce Street, Milford, Michigan 48381 (the Property).

19. On September 1, 2007, Respondents Christopher Day and RE/MAX Platinum entered a listing agreement for the Property.

20. The Property is “target housing” as defined in 40 C.F.R. § 745.103.

21. On the following dates, Respondents, either directly or through their authorized agent, entered into the following lease agreement (contract) with individuals for the lease of the Property:

<b>Address</b>	<b>Date of Lease</b>
319 E. Commerce Street, Milford, Michigan	April 28, 2008

22. The contract referred to in paragraph 21, above, covered a term of occupancy greater than 100 days.

23. Respondent Christopher Day is a “lessor,” as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 21, above, for lease.

24. Respondent ReMax Platinum is an “agent” as defined in 40 C.F.R. § 745.103, because it entered into a contract with the lessor for purpose of selling or leasing the Property.

25. The individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 21, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

26. Respondents failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of the property at 319 E. Commerce Street, Milford, Michigan, 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. Respondents 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 the lease of the property at 319 E. Commerce Street, Milford, Michigan, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondents 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 the lease of the property at 319 E. Commerce Street, Milford, Michigan, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. Respondents 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 the lease of the property at 319 E. Commerce Street, Milford, Michigan, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondents 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 or as an attachment to the contract for the lease of the property at 319 E. Commerce Street, Milford, Michigan, 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 \$18,963. 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, and the degree of culpability. 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 must pay a \$18,963 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

Or for *express mail*:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
Contact: Natalie Pearson  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state In the Matter of: Chris Day and RE/MAX Platinum, the docket number of this CAFO, and the billing document number.

Or by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state In the Matter of: Chris Day and RE/MAX Platinum, the docket number of this CAFO, and the billing document number.

33. A transmittal letter stating Respondents' name, the case title, Respondents' complete addresses, the case docket number and the billing document number must accompany the payment. Respondents must send a copy of the check and transmittal letter to:

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

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

Gaylene Vasaturo (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

35. If Respondents do not pay the civil penalty timely, 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.

36. Pursuant to 31 C.F.R. § 901.9, Respondents 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.



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

**General Provisions**

37. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

38. 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.

39. 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.

40. Respondents certify that they are complying with the Lead Act and the Disclosure Rule.

41. The terms of this CAFO bind Respondents, and their successors and assigns.


42. 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.

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

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

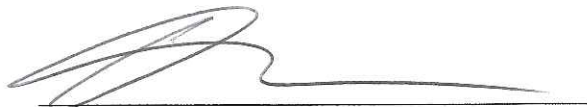
**Mr. Christopher Day, Respondent**

11-30-2011  
Date

  
Mr. Christopher Day

**RE/MAX Platinum, Respondent**

12-1-11  
Date

  
Mr. Dan Callum  
RE/MAX Platinum

**United States Environmental Protection Agency, Complainant**

12/28/11  
Date

Michael D. Harris for M.G.  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Chris Day and RE/MAX Platinum  
Docket No. TSCA-05-2012-0008

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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.

1-3-12

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**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 Christopher Day and RE/MAX Platinum, was filed on January 5, 2012, 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. 7009 1680 0000 7644 8598 to:

Mr. Christopher Day  
589 Sunset Road  
Winnetka, Illinois 60093

and

Mr. Dan Callum  
RE/MAX Platinum  
11500 Highland Road  
Winnetka, Illinois 60093  
Cert. Mail Receipt No. 7009 1680 0000 7644 8604

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and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Gaylene Vasaturo, 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

Docket No. TSCA-05-2012-0008