

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, Respondent admits 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, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondent agrees 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, Respondent hereby expressly waives 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. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney’s fees.
11. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.

Findings of Fact and Conclusions of Law

12. Fruit Hill Orchard, Inc. (“Respondent”) is a corporation organized in the Commonwealth of Virginia with its registered office located at 766 Echo Lane, Winchester, Virginia 22603.
13. At all times relevant to the violations in this CAFO, Respondent was the “lessor”, as these terms are defined in 40 C.F.R. § 745.103, of the residential real properties located at 327 Payne Road, Clear Brook, Virginia, and 5030 Middle Road, Winchester, Virginia (hereinafter “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. 327 Payne Road, Clear Brook, Virginia (Lease Transaction #1)

17. Respondent entered into a written contract, dated February 16, 2009 (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 327 Payne Road, Clear Brook, Virginia for an initial term commencing on February 16, 2009 and terminating on February 1, 2010 with monthly 30 day renewals thereafter.
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 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).

B. 5030 Middle Road, Winchester, Virginia (Lease Transaction #2)

21. Respondent entered into a written contract, dated November 7, 2011 (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 5030 Middle Road, Winchester, Virginia for an initial term commencing on December 1, 2011 and terminating on December 1, 2012 with monthly 30 day renewals thereafter.
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 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).

Violations

Counts 1-2

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

25. The allegations contained in Paragraphs 1 through 24, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
26. 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.”
27. Respondent 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 and #2 described in Paragraphs 17 through 24, above.
28. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s 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 #2 as described in Paragraphs 17 through 24, 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 3-4

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

29. The allegations contained in Paragraphs 1 through 28, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
30. 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.

31. Respondent 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 and #2 as described in Paragraphs 17 through 24, above, as required by 40 C.F.R. § 745.113(b)(2).
32. Pursuant to 40 C.F.R. § 745.118(e), Respondent's 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 and #2 as described in Paragraphs 17 through 24, 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 5-6

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

33. The allegations contained in Paragraphs 1 through 32 above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
34. 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.
35. Respondent 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 and #2, as described in Paragraphs 17 through 24, above, as required by 40 C.F.R. § 745.113(b)(4).
36. Pursuant to 40 C.F.R. § 745.118(e), Respondent's 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 and #2 as described in Paragraphs 17 through 24 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

37. Respondent agrees to pay the amount of Eighteen Thousand Two Hundred Forty-Two (\$18,242) 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 Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty of \$18,242.00 within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
38. 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.
39. Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, the Respondent has agreed to pay the civil penalty in the amount of Eighteen Thousand Two Hundred Forty-Two (\$18,242) in twelve (12) equal monthly installments with interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:
- 1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,535.16;
- 2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,533.91;
- 3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,532.66;
- 4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,531.41;
- 5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,530.16;

6th payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,528.92;

7th payment is due within 210 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,527.67;

8th payment is due within 240 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,526.42;

9th payment is due within 270 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,525.16;

10th payment is due within 300 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,523.92;

11th payment is due within 330 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,522.66; and

12th payment is due within 360 days of the date on which the CAFO is mailed or hand-delivered to the Respondents = \$1,521.37.

40. Under this proposed repayment schedule, the Respondents will pay the civil penalty of \$18,242.00 plus interest of \$97.43 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$1,520.17	\$14.99	\$1,535.16
2	\$1,520.17	\$13.74	\$1,533.91
3	\$1,520.17	\$12.49	\$1,532.66
4	\$1,520.17	\$11.24	\$1,531.41
5	\$1,520.17	\$9.99	\$1,530.16
6	\$1,520.17	\$8.75	\$1,528.92
7	\$1,520.17	\$7.50	\$1,527.67
8	\$1,520.17	\$6.25	\$1,526.42

9	\$1,520.17	\$4.99	\$1,525.16
10	\$1,520.17	\$3.75	\$1,523.92
11	\$1,520.17	\$2.49	\$1,522.66
12.	\$1,520.13	\$1.25	\$1,521.38
TOTAL:	\$18,242.00	\$97.43	\$18,339.39

41. Respondent shall pay the civil penalty monthly installments set forth in Paragraph 40, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2017-0125;
- 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 Respondent's check or a copy of Respondent's 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.

42. 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.
43. 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).
44. 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.
45. 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 Commonwealth of Virginia

46. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CAFO.

Effect of Settlement

47. 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

48. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Certification of Compliance

49. Respondent certifies to Complainant, upon investigation, to the best of its 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

50. 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 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

51. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent’s officers and directors (in their official capacity), successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

Effective Date

52. 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

53. 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 Respondent:

Fruit Hill Orchard, Inc.

Date: 4/21/17

By: *Diane Kearns President*
Diane Kearns
President

For the United States
Environmental Protection Agency:

Date: 5/1/17

By: *[Signature]*
Louis F. Ranzalho
Sr. Assistant Regional Counsel

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

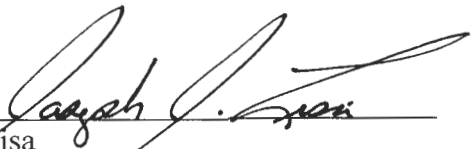
Date: 5-11-17

By: *Catherine A. Libertz*
Catherine A. Libertz, Acting Director
Land and Chemicals Division

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 Eighteen Thousand Two Hundred Forty-Two (\$18,242), 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: May 16, 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-03-2017-0125, was sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

Mark P. Friedlander, Jr.
Friedlander, Friedlander & Earman PC
1364 Beverly Road, Suite 201
McLean, VA. 22101
703-893-9600
mpfriedlander@verizon.net

RECEIVED
2017 MAY 16 AM 10:43
REGIONAL HEADQUARTERS
EPA REGION III PHILA. PA

Date

5/16/17



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