



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVE  
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

2008 FEB 12 PM 3:30

REGIONAL HEARING  
CLERK

FEB 11 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Wilfred Chery  
W. Chery Real Estate, Inc.  
1233 Clinton Avenue  
Irvington, NJ 07111

Re: In the Matter of **W. Chery Real Estate, Inc.**  
Docket No. TSCA-02-2007-9170

Dear Mr. Chery:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Joseph Kwiatkowski of my staff at (732) 906-6832, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth S. Stoller".

Kenneth S. Stoller, P.E., QEP, DEE  
Chief  
Pesticides and Toxic Substances Branch

Enclosure

cc: Mr. Douglas Mautner, Attorney at Law

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 FEB 12 PM 3:31

REGIONAL HEARING  
CLERK

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In the Matter of :  
: **W. Chery Real Estate, Inc.** : **CONSENT AGREEMENT AND**  
: : **FINAL ORDER**  
: :  
Respondent. : Docket No.  
: TSCA-02-2007-9170  
:   
Proceeding under Section 16(a) of :  
the Toxic Substances Control Act. :  
----- x

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). On September 19, 2007, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to W. Chery Real Estate, Inc., (hereinafter "Respondent"), with a business address of 1233 Clinton Avenue, Irvington, NJ 07111. The Complaint alleged that Respondent, acting as an agent, failed to ensure compliance with 40 C.F.R. Sections 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4) and 745.113(b)(6) during the year 2006, involving leasing target housing without providing: a lead warning statement, a statement disclosing any knowledge of lead-based paint, a list of any existing records or reports pertaining to lead-based paint, and/or obtaining signatures of the lessors, agents, or lessees certifying to the accuracy of their statements, which constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. Section 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689. Complainant and Respondent agree that settling this matter by entering into this Consent

Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent, acting as agent, leased the target housing unit at 28 Jacoby Street, Maplewood, New Jersey, to Marie Venette on or about August 29, 2006.
2. Complainant alleged Respondent leased the above referenced target housing unit without: (1) providing a lead warning statement, (2) providing a statement disclosing any knowledge of lead-based paint, (3) providing a list of any records or reports pertaining to lead-based paint or a statement that no such records exist, (4) obtaining a statement by the lessee affirming receipt of information including the lead hazard information pamphlet, and/or (5) obtaining the certifications and signatures of the lessor(s), agents(s) or lessee(s) certifying to the accuracy of their statements.
3. Subsequent to issuance of the complaint, Respondent provided a copy of the disclosure form, which had been completed at the time of the lease. This resolved the original allegations, but demonstrated a failure by Respondent to maintain required records.
4. Therefore, in one rental transaction, Respondent failed to ensure compliance with C.F.R. Section 745.113(c)(1), constituting one (1) failure or refusal to comply with 40 C.F.R. § 745.115(a)(2), which is a violation of 42 U.S.C. § 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed, and accepted by Respondent that it shall hereafter the date of execution of this Consent Agreement comply with the following terms:

1. Respondent shall comply with the applicable requirements of TSCA, and its implementing regulations, with respect to all target housing it leases or sells.

2. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies specific factual allegations in the Complaint; and (c) neither admits nor denies EPA's Findings of Fact and Conclusions of Law in this Consent Agreement.

3. Respondent shall pay a civil penalty in the amount of **Three Hundred Dollars (\$300)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the **"Treasurer, United States of America"** and shall be mailed to:

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

The checks shall be identified with a notation of the name and docket number of this case as follows: In the Matter of W. Chery Real Estate, Inc., Docket No. TSCA-02-2007-9170.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

1. Amount of Payment;
2. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
3. Account Code for Federal Reserve Bank of New York receiving payment: 68010727;
4. Federal Reserve Bank of New York ABA routing number: 021030004;
5. Field Tag 4200 of the Fedwire should read "D 68010727 Environmental Protection Agency";
6. Name of Respondent: W. Chery Real Estate, Inc.;
7. Case Number: TSCA-02-2007-9170.

Whether payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Joseph Kwiatkowski  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue  
Lead Team, MS 225  
Edison, NJ 08837

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

The payment must be received at the above address on or before 45 calendar days after the date of the signature of the Final Order, which is located at the end of this CAFO. (The date by which payment must be received shall hereinafter be referred to as the “due date”.)

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection.
- b. Furthermore, if payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- d. The effective date of this CAFO shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

4. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This CAFO is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

8. Full payment of the penalty in a settlement pursuant to 40 C.F.R. § 22.18(b) shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this CAFO by an EPA employee other than the Regional Hearing Clerk.

**W. Chery Real Estate, Inc.**  
**Docket No. TSCA-02-2007-9170**

RESPONDENT:

**W. Chery Real Estate, Inc.**

BY: William Chery  
(Authorizing Signature)

NAME: WILLIAM CHERY  
(PLEASE PRINT)

TITLE: owner / BROKER

DATE: 1/16/08

COMPLAINANT:

[Signature]  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007

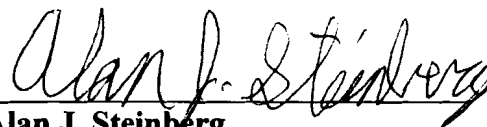
DATE: JANUARY 30, 2008



**W. Chery Real Estate, Inc.**  
**Docket No. TSCA-02-2007-9170**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



**Alan J. Steinberg**  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007

DATE: 2-5-08

**W. Chery Real Estate**  
**Docket No. TSCA-02-2007-9170**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

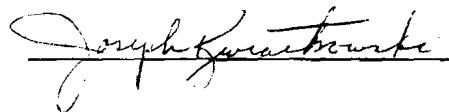
Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16th floor  
New York, NY 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Mr. Wilfred Chery  
W. Chery Real Estate, Inc.  
1233 Clinton Avenue  
Irvington, NJ 07111

Douglas Mautner, Esq.  
Attorney at Law  
101 Beech Street  
Rutherford, NJ 07070

Dated: February 11, 2008  
Edison, NJ

  
\_\_\_\_\_  
Joseph Karabourakis