



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

SEP 30 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7661 9905

Mr. Leonard V. Crowley
Attorney at Law
310 4th Ave So, STE 1100
1100 Flour Exchange Bldg
Minneapolis, Minnesota 55415-1005

Brad Niles d/b/a Calabash Properties **TSCA-05-2010-0023**

Dear Mr. Crowley:

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 September 30, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$18,000 is to be paid in the manner described in paragraphs 35 and 36. Please be certain that the number **BD 2751067X013** and the docket number are written on both the transmittal letter and on the check. First payment is due by October 30, 2010 (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 Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Brad Nilles d/b/a Calabash Properties)
St. Paul, Ohio,)
)
Respondent,)
_____)

Docket No. TSCA-05-2010-0023
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

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Consent Agreement and Final Order Commencing and Concluding the Proceeding

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Brad Nilles d/b/a Calabash Properties, a sole proprietor with a place of business located at 525 Ohio Street, St. Paul, Minnesota.
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 and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, 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. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

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. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

16. 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.

17. 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).

18. 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

19. Between at least December 6, 2004 and June 12, 2007, Respondent owned and managed residential rental properties at 762 17th Avenue North, South St. Paul, Minnesota and 352 Bates Avenue; 293 Dayton Avenue; 475 Dayton Avenue; 203 North Grotto Street; 211 North Grotto Street; 658 Hague Avenue; 732 Marshall Avenue; 736 Marshall Avenue; 549 Selby Avenue; 688 Virginia Street and 123 Winifred Street, St. Paul, Minnesota (Respondent's Properties).

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

21. Respondent's Properties and each apartment unit within Respondent's Properties are "target housing" as defined in 40 C.F.R. § 745.103.

22. On July 24, 2007 representatives of EPA and HUD conducted an inspection at Respondent's office at 525 Ohio Street, St. Paul, Minnesota to monitor compliance with Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

23. Publicly available documents from Minnesota identify Brad Nilles doing business as the assumed name Calabash Properties, with a place of business at 525 Ohio Street, St. Paul, Minnesota.

24. On the following date(s), Respondent, either directly or through its authorized agent, entered into the following 20 written lease agreements (contracts) with individuals for the lease of units in Respondent's residential rental properties:

Address	Apt. No.	Date of Lease
762 17 th Avenue North		04/27/2006
352 Bates Avenue	3	11/02/2006
352 Bates Avenue	4	10/21/2005
352 Bates Avenue	5	07/28/2005
352 Bates Avenue	6	07/12/2005
293 Dayton Avenue	3	05/01/2006
293 Dayton Avenue	5	06/14/2006

475 Dayton Avenue	1	07/20/2006
475 Dayton Avenue	4	04/20/2005
203 North Grotto Street	1	08/30/2005
211 North Grotto Street	3	07/03/2006
658 Hague Avenue	4	12/11/2006
732 Marshall Avenue	3	06/28/2006
732 Marshall Avenue	4	07/11/2006
736 Marshall Avenue	1	06/01/2007
736 Marshall Avenue	3	12/27/2006
736 Marshall Avenue	4	06/12/2007
549 Selby Avenue	2	11/03/2006
688 Virginia Street	690	07/12/2005
123 Winifred Street	3	03/02/2007

25. Each of the 20 contracts referred to in paragraph 24, above, covered a term of occupancy greater than 100 days.

26. Between December 6, 2004 and June 12, 2007, Respondent offered for lease units in its residential rental properties, and individuals entered into contracts on the dates listed in paragraph 24, above, to lease those units.

27. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 24, above, for lease.

28. Each individual who signed a lease to pay rent in exchange for occupancy of a unit, referenced in paragraph 24, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

29. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contracts for the lease of Respondent’s properties as identified in paragraph 24, above, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. 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 the

lease of Respondent's properties as identified in paragraph 24, above, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

31. 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 the lease of Respondent's properties as identified in paragraph 24, above, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

32. 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 the lease of Respondent's properties as identified in paragraph 24, above, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

33. 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 or as an attachment to the contract for the lease of Respondent's properties as identified in paragraph 24, above, 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

34. 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 \$18,000. 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, and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

35. Respondent must pay the civil penalty payment of \$18,000, with interest, in accordance with the following schedule: within 30 days after the effective date of this CAFO, Respondent must pay the first penalty payment of \$6,000; within 210 days of the effective date of the CAFO, Respondent must pay the second penalty payment of \$3,059.18; within 390 days of the effective date of the CAFO, Respondent must pay the third penalty payment of \$3,044.38; within 570 days of the effective date of this CAFO, Respondent must pay the fourth penalty payment of \$3,029.59; and within 750 days of the effective date of this CAFO, Respondent must pay the fifth penalty payment of \$3,014.79. Respondent shall make each civil penalty payment 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

Each check must state In the Matter of: Brad Nilles d/b/a Calabash Properties, the docket number of this CAFO, and the billing document number.

36. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany each 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 Boulevard
Chicago, Illinois 60604

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

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

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

38. If Respondent does not pay an installment payment as set forth in paragraph 35, above, the entire unpaid balance of the civil penalty, and any amount required by paragraph 39, below, shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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.

General Provisions

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.
41. 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.
42. 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.
43. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.
44. The terms of this CAFO bind Respondent, and his successors and assigns.
45. 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.
46. Each party agrees to bear its own costs and attorney's fees in this action.
47. This CAFO constitutes the entire agreement between the parties.

Brad Nilles d/b/a Calabash Property

9-14-10
Date


Brad Nilles
Brad Nilles d/b/a Calabash Properties

United States Environmental Protection Agency, Complainant

9/27/10

Date



Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

In the Matter of:
Brad Nilles d/b/a Calabash Properties
Docket No. TSCA-05-2010-0023

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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.

9-28-10

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 Brad Niles d/b/a Calabash Properties, was filed on September 30, 2010, 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 7661 9905 to:

Mr. Leonard V. Crowley
Attorney at Law
310 4th Ave So, STE 1100
1100 Flour Exchange Bldg
Minneapolis, Minnesota 55415-1005

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert H. Smith, 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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