



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

SEP 29 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7672 0090

Mr. Ronnie V. White
1859 O'Brien Street
South Bend, Indiana 46628

Consent Agreement and Final Order

Docket No: TSCA-05-2011-0023

Dear Mr. White:

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 29, 2011, with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,484.41 is to be paid in the manner described in paragraphs 60 and 61. Please be certain that the number **BD 2751147X015** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 29, 2011 (within 90 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Dunn".

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Richard J. Clarizio, Counsel for Complainant/C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2011-0023
)	
Ronnie V. White)	Proceeding to Assess a Civil
South Bend, Indiana.)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
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Consent Agreement and Final Order

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 Ronnie V. White, a sole proprietor with a place of business located at 1859 O'Brien Street, South Bend, Indiana 46628.
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. § 745.113(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 and lessee certifying the accuracy of their statements.

15. 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).

16. 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

17. Between at least August 1, 2008, and November 1, 2008, Respondent owned single-family dwellings at 724 N. Allen Street, 1109 N. Elmer Street, and 2115 N. Johnson Street, South Bend, Indiana (Respondent's properties).

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

19. On the following dates, Respondent entered into the following three written lease agreements (contracts) with individuals for the lease of Respondent's single-family dwellings in South Bend, Indiana:

Address	Date of Lease
724 N. Allen Street	8/1/08
1109 N. Elmer Street	11/7/08
2115 N. Johnson Street	8/17/08

20. Each of the three contracts referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 19, above, for lease.

22. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 19, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

Failure to Disclose in Rental Transactions

Counts 1 through 3

23. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

24. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.107(a)(1) requires the seller or lessor to provide the purchaser or lessee with an EPA- approved lead hazard information pamphlet.

25. Count 1: Respondent failed to provide an EPA-approved lead hazard information pamphlet to the lessee of 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in paragraph 19, above.

26. Count 2: Respondent failed to provide an EPA-approved lead hazard information pamphlet to the lessee of 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

27. Count 3: Respondent failed to provide an EPA-approved lead hazard information pamphlet to the lessee of 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

28. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to the lessees of the target housing referenced in paragraphs 25 through 27, above, constitutes three violations of 40 C.F.R. § 745.107(a)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 4 through 6

29. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

30. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include a Lead Warning Statement, either within each contract or as an attachment to each contract to lease target housing.

31. Count 4: Respondent failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in paragraph 19, above.

32. Count 5: Respondent failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

33. Count 6: Respondent failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

34. Respondent's failure to include a Lead Warning Statement, either within each

contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 31 through 33, above, constitutes three violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 7 through 9

35. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

36. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor 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 each contract or as an attachment to each contract to lease target housing.

37. Count 7: Respondent failed to include a statement disclosing either the presence of any known lead-based paints and 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 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in paragraph 19, above.

38. Count 8: Respondent failed to include a statement disclosing either the presence of any known lead-based paints and 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 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

39. Count 9: Respondent failed to include a statement disclosing either the presence of

any known lead-based paints and 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 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

40. Respondent's failure to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within each contract or as an attachment to each contract, in each contract for each leasing transaction referenced in paragraphs 37 through 39, above, constitutes three violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 10 through 12

41. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

42. 40 C.F.R. § 45.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 45.113(b)(3) requires a lessor 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 housing that have been provided to the lessee or a statement that no such records are available, either within each contract or as an attachment to each contract to lease target housing.

43. Count 10: Respondent failed to include 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, either within the contract or as an attachment to the contract for 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in

paragraph 19, above.

44. Count 11: Respondent failed to include 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, either within the contract or as an attachment to the contract for 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

45. Count 12: Respondent failed to include 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, either within the contract or as an attachment to the contract for 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

46. Respondent's failure to include 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, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 43 through 45, above, constitutes three violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 13 through 15

47. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

48. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include 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. § 2696, either within each contract or as an attachment to each contract.

49. Count 13: 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 (b)(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 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in paragraph 19, above.

50. Count 14: 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 (b)(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 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

51. Count 15: 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 (b)(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 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

52. Respondent's failure to include 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. § 2696, either within each contract or as an attachment to each contract, for each leasing transactions referenced in paragraphs 49 through 51, above, constitutes three violations of 40 C.F.R § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 16 through 18

53. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

54. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature, either within each contract or as an attachment to each contract to lease target housing.

55. Count 16: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 724 N. Allen Street, South Bend, Indiana, in the August 1, 2008, contract referenced in paragraph 19, above.

56. Count 17: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 1109 N. Elmer Street, South Bend, Indiana, in the November 7, 2008, contract referenced in paragraph 19, above.

57. Count 18: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 2115 N. Johnson Street, South Bend, Indiana, in the August 17, 2008, contract referenced in paragraph 19, above.

58. Respondent's failure to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of signature for each rental transaction,

either within each contract or as an attachment to each contract to lease target housing, as referenced in paragraphs 55 through 57, above, constitutes three violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

59. 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 \$10,458. 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.

60. Within 90 days after the effective date of this CAFO, Respondent must pay a \$10,458 civil penalty with interest of \$26.41 for a total payment of \$10,484.41 for the TSCA violations by express mail delivery by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state In re: Ronnie V. White, the docket number of this CAFO, and the billing document number 2751147X015.

61. 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 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 Boulevard
Chicago, Illinois 60604

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

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

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

63. If Respondent does not pay timely the civil penalty 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.

64. 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

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

66. This CAFO does not affect the rights of EPA or the United States to pursue

appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

67. 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.

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

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

70. 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.

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

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

Ronnie V. White, Respondent

9-12-11
Date

Ronnie V. White
Ronnie V. White

United States Environmental Protection Agency, Complainant

9/23/11
Date


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

**In the Matter of:
Ronnie V. White
Docket No. TSCA-05-2011-0023**

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.

9-28-11
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
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 Ronnie V. White, was filed on September 29, 2011, 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 7672 0090 to:

Mr. Ronnie V. White
1859 O'Brien Street
South Bend, Indiana 46628

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Richard J. Clarizio, 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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