

U. S. ENVIRONMENTAL PROTECTION AGENCY 10 SEP 29 PM 4:01
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
WESTRE INVESTMENTS, LLC,) Docket No. TSCA-07-2010-0013
St. Louis, Missouri)
Respondents)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Westre Investments, LLC (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I
Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondents has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 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, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Section II
Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Westre Investments, LLC, a corporation in good standing which is authorized to do business within the state of Missouri.

Section III
Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide

purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Section IV
General Factual Allegations

6. Respondent is a "person" within the meaning of TSCA.
7. Respondents is the "lessor" as defined by 40 C.F.R. § 745.103, for the lease of the residential units located on the first and second floors at 5007 Durant, St. Louis, Missouri; and the residential unit located at 2629 Daman Court, St. Louis, Missouri.
8. The units described above were constructed before 1978.
9. The units described above are "target housing" as defined by 40 C.F.R. § 745.103.

Violations

10. On October 28, 2009, EPA conducted an evaluation of Respondent's compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondents as part of that evaluation. Based upon that evaluation, the Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

11. The facts stated in Paragraphs 1 through 10 above are herein incorporated.
12. Respondent entered into a contract to lease the target housing unit located on the first

floor of 5007 Durant, St. Louis, Missouri on or November 1, 2008.

13. Respondent failed to provide the lessees of the target housing unit described in this count with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

14. Respondent failed to disclose its knowledge, or lack thereof, of the presence of lead-based paint in the target housing unit described in this count.

15. Respondent's failure to perform the acts indicated in this count are violations of 40 C.F.R. §§ 745.107, 745.113, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

16. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

17. Respondent entered into a contract to lease the target housing unit located on the second floor of 5007 Durant, St. Louis, Missouri on November 1, 2008.

18. Respondent failed to provide the lessees of the target housing unit described in this count with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

19. Respondents failed to disclose its knowledge, or lack thereof, of the presence of lead-based paint in the target housing unit described in this count.

20. Respondent's failure to perform the acts indicated in this count are violations of 40

C.F.R. §§ 745.107, 745.113, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

21. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

22. Respondent entered into a contract to lease the target housing unit located at 2629 Daman Court, St. Louis, Missouri on August 1, 2008.

23. Respondent failed to provide the lessees of the target housing unit described in this count with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

24. Respondent's failure to perform the acts indicated in this count are violations of 40 C.F.R. §§ 745.107, 745.113, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V **Consent Agreement**

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth herein.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal

hearing and to bear their respective costs and attorney's fees.

29. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

30. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

31. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

32. In settlement of this matter, Respondent agrees to complete the following lead abatement Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

Replace windows at 4947 Laclede Avenue to include the first floor west, first floor east and third floor east, 19 nineteen double hung windows in each unit. This will involve Fifty-seven (57) windows in total. All work will be performed in a lead safe manner. The SEP shall be performed in accordance with the work plan, which is attached hereto and marked "Exhibit 1."

In accordance with Missouri state regulations, found at 19 CSR 30-70.630, following the completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

33. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior

Services informing the state of Respondent's intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

34. The total expenditure for the SEP shall be not less than Nineteen Thousand Nine Hundred Thirty-Three dollars (\$19,933) and the SEP shall be completed no later than 120 days from effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

35. Respondent agrees that the abatement work on the SEP project referenced in Paragraph 32 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 22 above receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project including the EPA approved SEP Work Plan, if applicable. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

36. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by an officer of the Respondent corporation:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

As to EPA:

Mr. Stephven X. Richard, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

As to the state:

Brandon Rekus
Missouri Department of Health and Senior Services
930 Wildwood
Jefferson City, MO 65109

37. If the SEP referenced in Paragraph 32 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within one hundred twenty (120) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 36 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

38. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certify that they have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

39. For federal income tax purposes, Respondent agrees that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

40. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

41. Respondent understands that its failure to timely pay any portion of the civil penalty

described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 27 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI
Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Two Thousand Two Hundred Fifteen Dollars (\$2,215) within 30 days from the final date of this Order. The payment shall be made at the address below. The payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

IN THE MATTER OF WESTRE INVESTMENTS, LLC
Docket No. TSCA-07-2010-0013

RESPONDENTS
WESTRE INVESTMENTS, LLC

Date: 9/24/10

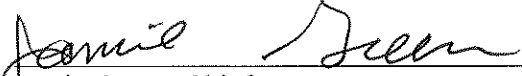
By: *Charles B Westre*

Charles B. Westre - member
(Print Name and Title)

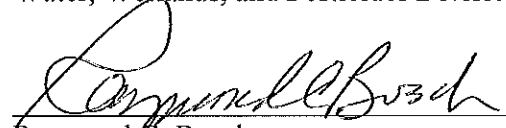
IN THE MATTER OF WESTRE INVESTMENTS, LLC
Docket No. TSCA-07-2010-0013

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/29/10


By: 
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 9-29-2010

By: 
Raymond C. Bosch
Office of Regional Counsel

IN THE MATTER OF WESTRE INVESTMENTS, LLC
Docket No. TSCA-07-2010-0013

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Sept. 29, 2011 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7



Fitzgibbons Painting, LLC
 718 Lemay Ferry Road
 St. Louis, MO 63125

Much more than a painting company...

St. Louis (314) 631-1111
 St. Charles (636) 326-9999
 Illinois (618) 236-6930
 Fax (314) 631-1150

Proposal

Westre Investments
 #3 Westwood Country Club
 St. Louis, MO 63131

Rep	Date	Estimate #
JF	9/21/2010	6717

	Description	Total
Work to be Done	Windows at 4947 Laclede Avenue to include the first floor west, first floor east and third floor east, 19 nineteen double hung windows in each unit. Fifty-seven (57) windows in total. Windows to be Easton Vinyl Max. Interior window trim and sills to be painted. Wrap the exterior cases with coil stock. Place critical barriers up as needed. Caution tape, signage, close off HVAC system. All work to be done in a lead-safe manner. To include, but not limited to, window replacement. Materials listed to be used. Fitzgibbons Painting, LLC to supply materials.	22,800.00
Painting	Remove and replace window sashes and window stop. Bag up debris, stops and sashes. Replace with new windows per manufacturers instructions. Caulk seams and interior windows with a paintable latex caulk. Paint the interior window trim with one coat of a premium interior latex paint. Exterior cases to be wrapped in coil stock and caulked with a petroleum based caulk. Materials applied by brush and roller.	

**COLOR AND SHEEN TO REMAIN THE SAME UNLESS OTHERWISE STATED.
 CUSTOMER TO REMOVE FURNISHINGS.**

All work to be completed in a workmanship manner according to standard practices with a one (1) year limited warranty. Products used will be guaranteed by manufacturer's warranty. No guarantee on customer supplied materials. Cosmetic repairs due to structural defects are not covered by any warranty. Floor surfaces are not warranted for one year. Any alterations or deviations from above specifications developing extra cost will be executed upon written orders, and all becomes as extra charges over and above the proposal. All agreements contingent upon workers, accidents, weather or any other delays beyond our control. Fitzgibbons Painting, LLC carries all necessary insurance. Our workers are fully covered by workman's compensation insurance.

Terms:

Cash unless otherwise stated. 1 1/2% credit charge per month will be assessed on invoices with an outstanding balance past 30 days.

We PROPOSE hereby to furnish materials and labor--complete in accordance with the above specifications, for the sum of:	Total	\$22,800.00
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Acceptance of Proposal
 The above prices, specifications and conditions are satisfactory and are hereby accepted. Fitzgibbons Painting, LLC is authorized to do the work as specified. Payment will be made as outlined above.

 SIGNATURE

 DATE

Please sign and date where indicated.

IN THE MATTER OF Westre Investments, LLC, Respondent
Docket No. TSCA-07-2010-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert E. Jones
Jones, Bick, Kistner, Jones & Lorenz
1600 So. Hanley Rd., Suite 101
St. Louis, Missouri 63144

Dated: 9/30/10


Kathy Robinson
Hearing Clerk, Region 7