



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 13 2012

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7672 1134

Mr. William L. Caplan
Buckingham, Doolittle and Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333-8332

Consent Agreement and Final Order
Keith Mirman, Akron, Ohio, Docket No. TSCA 05-2011-0012

Dear Mr. Caplan:

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 March 13, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,500.00 is to be paid in the manner described in paragraphs 10 and 11. Please be certain that the number BD 2751247X010 and the docket number are written on both the transmittal letter and on the check. Payment is due by April 12, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Morris".

Julie Morris
Pesticides and Toxic Compliance Section

Enclosures

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

RECEIVED

MAR 13 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)	Docket No. TSCA-05-2011-0012
)	
Keith Mirman,)	Proceeding to Assess a Civil Penalty
Akron, Ohio,)	Under Section 16(a) of the Toxic Substances
)	Control Act, 15 U.S.C. § 2615(a)
Respondent)	
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Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. On June 27, 2011, EPA filed the Complaint in this action against Respondent Keith Mirman. The Complaint alleges that Respondent violated Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. § 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4), and 745.113(b)(6), in six contracts to lease target housing.

3. Respondent filed an Answer and requested a hearing in this matter.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted in his Answer.

5. Respondent waives any right to contest the allegations in the Complaint and his right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that he is complying fully with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations at 40 C.F.R. Part 745.

7. Respondent consents to the assessment of the civil penalty stated in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalties

9. In consideration of the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, his cooperation, the effect of a civil penalty on his ability to continue to do business, the lack of any history of such prior violations, and Respondent's agreement to perform a supplemental environmental project (SEP), EPA agrees to mitigate the proposed penalty of \$92,675 to \$15,000; the \$15,000 civil penalty will be further reduced to \$1,500 if the Respondent performs successfully the EPA-approved SEP.

10. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,500 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular mail to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, the Respondent may send a cashier's or certified check, payable to "Treasurer, United States of America," by overnight mail to:

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

The check must state In the Matter of: Keith Mirman, Akron, Ohio, the docket number of this CAFO, and the billing document number.

11. A transmittal letter stating Respondent's name, 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

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

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

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

13. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 26, below, 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.

14. 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 payment was due at a rate established by the Secretary of the Treasury. 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.

Supplemental Environmental Project

15. Respondent must complete a supplemental environmental project (SEP) designed to protect public health by renovating the property located at 593 Glendora Avenue, Akron, Ohio (“Property”).

16. Respondent must complete by no later than August 31, 2012, a lead-based paint renovation project (“LBP Renovation Project”) designed to protect tenants from direct contact with lead-based paint or dust contaminated with lead-based paint by (a) the placement of a sealed, aluminum foil, vapor barrier over the existing wood exterior of the Property (believed to be covered currently with one or more layers of lead-based paint) incident to the installation of vinyl siding, and (b) replacement of all interior and exterior wooden doors and the corresponding door jams located in the house on the Property.

17. Respondent expects to spend approximately \$20,000 on the LBP Renovation Project described in paragraph 16. For purposes of determining the cost of the LBP Renovation Project, the Respondent and the EPA agree that the total cost of this SEP includes the entire cost of all services provided by the certified contractors, including those post renovation costs as described in paragraph 19, and all costs and expenses incurred by the Respondent and/or his contractors to purchase all materials and supplies necessary to complete the LBP Renovation Project.

18. SEP Certifications:

- a. Respondent certifies that he is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date he signs this CAFO.

- b. Respondent certifies that he has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- c. Respondent certifies that he shall not use any HUD assistance, including all HUD grants, as well as Community Development Block Grants, to perform the renovation work required by this CAFO.
- d. Respondent certifies that he is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- e. Respondent certifies that, to the best of his knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

19. Respondent must perform the SEP in accordance with the applicable federal work practice standards set forth in 40 C.F.R. § 745.85. The work performed must be under the direction of a renovator certified in accordance with 40 C.F.R. § 745.90(a) and carried out by either certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2). Respondent must perform post renovation cleaning verification upon completion of the LBP Renovation consistent with the requirements of 40 C.F.R. § 745.85(b). The individuals conducting the post renovation cleaning verification must not be paid or employed or, otherwise compensated by the individuals conducting the LBP Renovation Project.

20. EPA may inspect the house located on the Property at any time between the effective date of the Order and December 31, 2012, to monitor Respondent's compliance with this CAFO's SEP requirements. Any access to the Property or units therein will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

21. Respondent must submit no later than September 30, 2012, a LBP Renovation Report that includes the results of the post-renovation cleaning verification (SEP completion report). This report must contain the following information, to the best of Respondent's knowledge:

- a. a description of the LBP Renovation Project as completed, which includes the sampling information contained in subparagraph b, below;
- b. a post-renovation cleaning verification report for the Property;
- c. itemized costs of goods and services used to complete the LBP Renovation Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; including receipts for the post-renovation cleaning verification;
- d. documentation that Respondents did not use any HUD assistance, including all HUD grants as well as Community Development Block Grants, to perform the renovation work required by this CAFO; and,
- e. documentation that the individuals who performed the LBP Renovation Project and the post-renovation cleaning verification were certified to perform such work in accordance with the state and local laws and regulations.

22. Respondent must submit all notices and reports required by this CAFO by first class mail to Julie Morris of the Pesticides and Toxics Compliance Section at the address provided in paragraph 11, above.

23. In each report that Respondent submits as provided by this CAFO, Respondent must certify that the report is true and complete by including the following signed statement:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

24. Following receipt of the SEP completion report described in paragraph 22, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and SEP report;
- b. There are deficiencies in the SEP as completed, or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 26, below.

25. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 27, below.

26. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO including the schedule in paragraph 16, Respondent must pay a penalty of \$13,500.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 80 percent of \$20,000, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 80 percent of \$20,000, Respondent must pay a penalty of the difference between \$20,000, and the actual amount spent.

- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report, not to exceed \$13,500:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$50.00	1 st through 14 th day
\$100.00	15 th through 30 th day
\$150.00	31 st day and beyond

27. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

28. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 10, above, and will pay interest, handling charges, and penalties on any overdue amounts as specified in paragraph 14, above.

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

30. Any public statement that Respondent makes referring to the SEP must include the following language, "Keith Mirman undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against him for violations of Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a)."

31. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay.

- b. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of the delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond his control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

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

33. 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 violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 40 C.F.R. 745, Subparts E and F, and other applicable federal, state, and local laws.

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

36. 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.

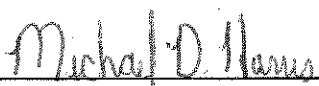
37. Each party agrees to bear its own costs and attorney's fees in this action.

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

Keith Mirman, Respondent

2/13/12 
Date Keith Mirman

United States Environmental Protection Agency, Complainant

3/07/12  *for M.G.*
Date Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Keith Mirman
Docket No. TSCA-05-2011-0012**

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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.

3-8-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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MAR 13 2012

CERTIFICATE OF SERVICE


REGIONAL HEARING CLERK

This is to certify that the original and one copy of this Complaint of the civil administrative action involving Mr. Keith Mirman, was filed on March 13, 2012, 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 1134, along with a copy each of the to:

Mr. William L. Caplan
Buckingham, Doolittle and Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333-8332

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Steven P. Kaiser, 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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