



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 01 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7671 5676

Mr. Paul E. Sicula  
Atinky, Sicula & Teper  
135 West Wells Street, Suite 604  
Milwaukee, Wisconsin 53203

Benneth Aduba and Belinda Aduba TSCA-05-2012-0003

Dear Mr. Sicula:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on November 1, 2011, with the Regional Hearing Clerk.

The Respondents were assessed a civil penalty of \$82,985 for there violations; the penalty was reduced to \$0 after a financial assessment showed they did not have the ability to pay a penalty.

In accordance with paragraph 28 of the CAFO, there is no assessed civil penalty.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Anderson".

for Christine Anderson

Pesticides and Toxic Compliance Section

Enclosures

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY NOV - 1 2011  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No. TSCA-05-2012-0003
	)	
Benneth Aduba	)	
Belinda Aduba	)	Proceeding to Assess a Civil
Milwaukee, Wisconsin	)	Penalty Under Section 16(a) of the
	)	Toxic Substances Control Act,
Respondents.	)	15 U.S.C. § 2615(a)
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Consent Agreement and Final Order

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, U.S. Environmental Protection Agency, Region 5.

3. Respondents are Benneth Aduba and Belinda Aduba, individuals doing business in the State of Wisconsin.

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. Respondents consent to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their 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 their 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 and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after 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 May 20, 2008 and October 31, 2009, Respondents owned residential dwellings at 4752 North 42nd Place, 3393 North 24th Street, and 4036 North 25th Street; Milwaukee, Wisconsin (Respondents' properties).

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

19. On the following dates, Respondents entered into the following three lease

agreements (contracts) with individuals for the lease of Respondents' properties, all located in Milwaukee, Wisconsin:

<b>Address</b>	<b>Date of Contract (Lease) Obligation</b>
4752 North 42nd Place	October 24, 2008
3393 North 24th Street	April 30, 2009
4036 North 25th Street	May 11, 2008

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

21. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they 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.

23. Respondents failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondents' properties, referred to in paragraph 19, 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).

24. Respondents 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 referred to in paragraph 19, 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).

25. Respondents 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 had been

provided to the lessee or a statement that no such records were available, either within the contract or as an attachment to the contract, for the lease of Respondents' properties referred to in paragraph 19, 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).

26. Respondents 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 referred to in paragraph 19, 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).

27. Respondents failed to include the signatures of the lessor 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 Respondents' properties referred to in paragraph 19, 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**

28. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that Respondents' ability to pay a penalty is \$0. In determining the civil penalty, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondents' ability to pay, the effect on the Respondents' ability to continue to conduct 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.

29. Within 30 days of the effective date of this CAFO, Respondents agree to enroll in and attend a course regarding the hazards of lead-based paint (the Course) accredited by the State of Wisconsin. EPA estimates the value of the Course at approximately \$250.00 per person.

Respondents will furnish documentation of their completing the Course to:

Christine L. Anderson  
Pesticides and Toxics Compliance Section  
U.S. EPA. Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondents, as lessors, own properties subject to the lead-safe requirements set forth in the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, Subpart E. If and when such work activities occur at their properties, Respondents shall undertake such work in compliance with that Rule.

#### **General Provisions**

28. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

29. 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.

30. This CAFO does not affect Respondents' responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

31. Respondents certify that they are complying with the Lead Act and the Disclosure Rule.

32. The terms of this CAFO bind Respondents, and their successors and assigns.

33. 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.

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

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

**Benneth Aduba and Belinda Aduba, Respondents**

9/13/11  
Date

Benneth Aduba  
Benneth Aduba

9/13/11  
Date

Belinda A Aduba  
Belinda Aduba

**United States Environmental Protection Agency, Complainant**

10/27/11  
Date

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



In the Matter of:  
Benneth Aduba  
Belinda Aduba  
Docket No. TSCA-05-2012-0003

**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.

10-28-11  
Date



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Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order involving Benneth Aduba and Belinda Aduba, was filed on November 1, 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 7671 5676, along with a copy each to:

Mr. Paul E. Sicula  
Atinky, Sicula & Teper  
135 West Wells Street, Suite 604  
Milwaukee, Wisconsin 53203

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Tom Williams, 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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