

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In the Matter of: )

POTOMAC HOUSING REALTORS, LLC )  
27 Polo Green Road )  
Martinsburg, WV 25401 )

RESPONDENT )

Docket No.: TSCA-03- 2012-

Proceeding Under Section 16 of the )  
Toxic Substances Control Act, U.S.C. )  
Section 2615(a) )

REGIONAL HEARING CENTER  
EPA REGION III, PHILADELPHIA, PA

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**CONSENT AGREEMENT**

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This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Potomac Housing Realtors (or “Respondent”) pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2689 and 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 of Practice”), 40 C.F.R. Part 22.

**I. PRELIMINARY STATEMENT AND STIPULATIONS**

1. Complainant initiated this proceeding on January 4, 2012 with the filing of an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent seeking the assessment of a civil penalty pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice, 40 C.F.R. Part 22, for violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* (“RLBPHRA”), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689.

## II. GENERAL PROVISIONS

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint.
3. Except as provided in Paragraph 2, above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in the Complaint or in this Consent Agreement.
4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order (collectively, "CAFO"), or the enforcement of this CAFO.
5. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. Each party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Subject to Paragraphs 2 and 3, above, EPA incorporates by reference, as if fully set forth herein, the factual allegations and conclusions of law contained in the Complaint as the Findings of Fact and Conclusions of Law of this Consent Agreement.
9. Based upon EPA's Findings of Fact and Conclusions of Law, EPA concludes that Respondent violated provisions of TSCA, the RLBPHRA and the Disclosure Rule, in regards to nine (9) written lease transactions identified in the Complaint.
10. As a result of EPA's conclusion that Respondent violated TSCA, the RLBPHRA, and the Disclosure Rule, EPA has determined that Respondent is liable for a civil penalty.

## IV. CIVIL PENALTY

11. Respondent agrees to pay a civil penalty in the amount of **Seven Thousand Two Hundred Seventy-Six Dollars (\$7,276.00)** in settlement and satisfaction of all civil claims which Complainant may have against Respondent under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged against Respondent in the

Complaint. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest in connection with such civil penalty, as described in this CAFO, Respondent must pay the civil penalty no later than **thirty (30) calendar days** after the effective date of the accompanying Final Order. The settlement amount of this Consent Agreement was based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERP")*, dated December 2007.

12. Respondent has asserted that it will be unable to pay the civil amount in full within thirty (30) calendar days from the date on which this CAFO is mailed to Respondent. As a result it is the understanding of the parties that Respondent will pay the civil penalty in twelve (12) equal installments and will pay interest at the rate of 1% per annum on the outstanding principle balance, totaling **Seven Thousand Three Hundred Ten Dollars and four cents (\$7,310.04)**, and according to the following schedule:

1<sup>st</sup> payment, in the amount of \$609.17, is due within 30 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$0.00;

2<sup>nd</sup> payment, in the amount of \$609.17, is due within 60 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$5.74;

3<sup>rd</sup> payment, in the amount of \$609.17, is due within 90 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$5.22;

4<sup>th</sup> payment, in the amount of \$609.17, is due within 120 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$4.55;

5<sup>th</sup> payment, in the amount of \$609.17, is due within 150 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$4.18;

6<sup>th</sup> payment, in the amount of \$609.17, is due within 180 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an

interest payment of \$3.54;

7<sup>th</sup> payment, in the amount of \$609.17, is due within 210 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$3.14;

8<sup>th</sup> payment, in the amount of \$609.17, is due within 240 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$2.62;

9<sup>th</sup> payment, in the amount of \$609.17, is due within 270 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$1.89;

10<sup>th</sup> payment, in the amount of \$609.17, is due within 300 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$1.57;

11<sup>th</sup> payment, in the amount of \$609.17, is due within 330 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$1.01; and

12<sup>th</sup> payment, in the amount of \$609.17, is due within 360 days of the date on which the CAFO is mailed to the Respondent and consists of a principal payment of \$609.17 and an interest payment of \$0.58.

Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of seven thousand three hundred ten dollars and four cents (\$7,310.04) which includes total interest payments in the amount of thirty-four dollars and four cents (\$34.04).

13. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 12, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 16-19, below, in the event of such failure or default. Nothing in this paragraph shall be construed to alter the Claim Collection Standards of 40 C.F.R. Part 13.
14. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2012-0072**;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck, 513-487-2105 or  
Craig Steffen 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

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

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

15. Respondent may also pay the amount described in Paragraphs 11 and/or 12, above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

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 wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Environmental Protection Agency, Account No. 310006  
CTX Format Transaction Code 22 - checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: Jessie White 301-887-6548 or  
REX 1-866-234-5681

- c. On-Line Payment Option:

[WWW.PAY.GOV/PAYGOV](http://WWW.PAY.GOV/PAYGOV)

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103 - 2029, and

Donzetta Thomas (3RC30)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street

Philadelphia, PA 19103-2029.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
17. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).
18. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
19. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
20. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

#### **V. EFFECT OF SETTLEMENT**

21. Payment of the penalty specified in paragraph 11, above, in the manner set forth in paragraphs 12 through 15 above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in paragraphs 16 through 19, above, shall constitute full and final satisfaction of all civil claims for penalties which EPA may have under TSCA and/or the RLBPHRA for the specific violations alleged against Respondent in the Complaint. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

## **VI. OTHER APPLICABLE LAWS**

22. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

## **VII. CERTIFICATION OF COMPLIANCE**

23. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is complying with applicable provisions of TSCA, the RLBPHRA and the Disclosure Rule, as such pertains to each target housing property that she personally owns and/or has a financial interest.

## **VIII. RESERVATION OF RIGHTS**

24. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in the Complaint. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

## **IX. PARTIES BOUND**

25. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

## **X. EFFECTIVE DATE**

26. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

## **XI. ENTIRE AGREEMENT**

27. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining

to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

## **XII. EXECUTION**

28. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

**For Respondent:**



Potomac Housing Realtors, LLC  
F. Page Burdette  
President & Broker

**For Complainant:**



U.S. EPA, Region III  
Donzetta Thomas (3RC50)  
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

By:



Abraham Ferdas, Director  
Land and Chemicals Division,  
U.S. EPA, Region III



The effective date of this Final Order and the accompanying Consent Agreement is the date on which this **FINAL ORDER** is filed with the EPA Regional Hearing Clerk.

Date: 7/31/12

Renee Sarajian

Renee Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant, the United States Environmental Protection Agency's, **Consent Agreement and Final Order, TSCA-03-2012-0072**, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies were sent in the following manner to the addresses listed below:

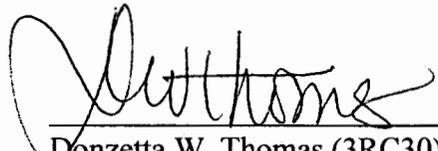
Facsimile Only at (202) 566-0044:

Honorable Barbara A. Gunning (1900L)  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

UPS Overnight to:

William D. Wilmouth, Esq.  
Steptoe & Johnson, PLLC  
1233 Main Street, Suite 3000  
Wheeling, WV 26003-0751

8/1/12  
DATE



Donzetta W. Thomas (3RC30)  
Senior Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2474