



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

NOV 02 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7662 0895

Mr. Brent W. Parks
B.W. Parks Property Management Corp.
1123 Main Street
Lafayette, Indiana 47901

B.W. Parks Property Management Corp. TSCA-05-2011-0001

Dear Mr. Parks:

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 November 2, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,360.00 is to be paid in the manner described in paragraphs 29 thru 30. Please be certain that the number **BD 2751147X002** and the docket number are written on both the transmittal letter and on the check. Payment is due by December 2, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Scott Cooper".

for Scott Cooper
Pesticides and Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
B.W. PARKS PROPERTY MGMT.)
CORPORATION,)
LAFAYETTE, INDIANA,)
)
RESPONDENT.)

Docket No.: TSCA-05-2011-0001

Proceeding to Assess a
Civil Penalty under Section
16(a) of the Toxic
Substances Control Act,
15 U.S.C. § 2615(a)

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CONSENT AGREEMENT AND FINAL ORDER REGIONAL HEARING CLERK
COMMENCING AND CONCLUDING A PROCEEDING 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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is B.W. Parks Property Management Corporation, a corporation with a place of business located at 1123 Main Street, Lafayette, Indiana.
4. According to 40 C.F.R. § 22.13(b), where parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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 terms of this CAFO, including the assessment of the civil penalty specified herein.

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, entitled Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (the 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.

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 and corporations.

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.

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 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 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.

ALLEGATIONS OF LIABILITY

17. Between April 20, 2005, and July 26, 2006, Respondent owned residential dwellings at 421 South 1st Street and 843 Hartford Street, Lafayette, Indiana, and 508 North Grant Street, and 3485 Woodmar Court, West Lafayette, Indiana (Respondent's Properties). Each of Respondent's Properties was constructed prior to 1978.

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 four written lease agreements (contracts), naming Respondent as lessor, with individuals for the lease of Respondent's single-family dwellings or apartment units within Respondent's residential dwellings:

Street Address	City, State	Apt. No.	Date of Lease
421 South 1 st St.	Lafayette, IN		10/1/05
843 Hartford St.	Lafayette, IN	2	2/3/06
508 North Grant St.	West Lafayette, IN		4/28/06
3485 Woodmar Ct.	West Lafayette, IN		11/28/05

20. Each of the four 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 it has offered the target housing referenced 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. Respondent failed to include a lead warning statement, either within the contract or as an attachment to each of the leases listed 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. Respondent failed to include a statement disclosing either the presence of any known lead-based paint or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the leases or as an attachment to each of the leases listed 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. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the leases or as an attachment to each of the leases listed 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. 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 (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the leases or as an attachment to each of the leases listed 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. Respondent 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 leases or as an attachment to each of the leases listed 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 an appropriate civil penalty to settle this action is \$2,360. 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, the degree of culpability and Respondent's agreement to perform a supplemental environmental project as described below. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,360 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state the case title, the docket number of this CAFO, and the billing document number.

30. 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

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

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

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

32. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 44, 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.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest and penalties 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.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

34. Respondent must complete a supplemental environmental project (SEP) designed to protect public health by removing and replacing all wooden windows, wooden window casements and wooden entry doors and by tilling soil along the exterior drip line and covering the soil with six inches of mulch at 916 Wabash Avenue, Lafayette, Indiana; and by stabilizing paint and repainting exterior wood porches at 1123 Main Street, Lafayette, Indiana. Respondent will also conduct continued monitoring of all remaining lead-based paint containing surfaces or components identified in a June 11, 2010, risk assessment conducted by Micro Air, Inc., and will maintain these lead-based paint containing surfaces in good condition free of lead-based paint hazards.

35. Respondent must spend at least \$21,220 to conduct the project.

36. Respondent will submit a plan to EPA within 30 days of the execution of this CAFO with milestones for completing the projects described in paragraph 34, above, contemplating all projects concluding within 360 days of the execution of the CAFO. The plan must include an ongoing operations and management plan, including ongoing monitoring for all lead-based paint containing surfaces or components identified at the properties that will not be removed as part of the SEP. The plan must also discuss plans for post abatement verification sampling, which must be conducted by a licensed risk assessor not affiliated with the certified firm that conducted the abatement work. All analyses of post abatement verification samples must be conducted at a laboratory recognized by EPA through the National Lead Laboratory Accreditation Program (NLLAP) as being capable of performing analyses for lead compounds in paint chips,

dust, and soil samples. EPA will review the plan and either approve or modify the plan within 14 days of its receipt of the plan. If EPA does not respond within the 14 day period, Respondent will implement the plan as proposed. Compliance with this plan, including any modifications, will be a necessary condition for successful completion of the SEP.

37. Respondent certifies that it 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 it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

38. Respondent must conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* and the State of Indiana and the Indiana State Department of Health's Lead-Based Paint Program, 410 IAC 32, including, but not limited to the occupant protection and notification requirements for lead-based paint abatement activities, unless otherwise specifically provided in this CAFO.

39. EPA may inspect the premises of 916 Wabash Avenue and 1123 Main Street, Lafayette, Indiana, at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must submit a SEP completion report to EPA by 390 days after the filing of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;

- b. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

41. Respondent must submit all notices and reports required by this CAFO by first class mail to Scott Cooper of the Pesticides and Toxics Compliance Section at the address provided in paragraph 30, above.

42. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

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.

43. Following receipt of the SEP completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the 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 43, below.

43. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten 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 that 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 44, below.

44. 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 requirements of or the schedule approved pursuant to paragraph 36, Respondent must pay a stipulated penalty of \$15,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 35, above, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 35, above, Respondent must pay a penalty of \$2,500.
- d. If Respondent did not timely submit the SEP completion report contemplated in paragraph 43, above, or the requirements of or the schedule approved pursuant to paragraph 36, above, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the delinquent document:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves the milestone.

45. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

46. 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 30, above, and will pay interest, handling charges, and penalties on overdue amounts as specified in paragraph 33, above.

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

48. Any public statement that Respondent makes referring to the SEP must include the following language, "B.W. Parks Management Corporation undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against B.W. Parks Management Corporation for violations of the Lead Paint Disclosure Act."

GENERAL PROVISIONS

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

50. 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 violations of law.

51. 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.

52. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

53. The terms of this CAFO bind Respondent, and its successors and assigns.

54. 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.

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

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

B.W. PARKS MANAGEMENT CORPORATION, Respondent

9/24/10
Date


Brent W. Parks
President

United States Environmental Protection Agency, Complainant

10/29/10
Date


Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

**In the Matter of:
B.W. Parks Management Corporation
Docket No.**

In the Matter of:
B.W. Parks Management Corporation
Docket No.
TSCA-05-2011-0001

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.

11-1-10
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

U.S. ENVIRONMENTAL
PROTECTION AGENCY
OCT 14 2010
OFFICE OF REGIONAL
COUNSEL

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 B.W. Parks Property Management Corporation, was filed on November 2, 2010, 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 7662 0895 to:

Mr. Brent W. Parks
B.W. Parks Property Management Corp.
1123 Main Street
Lafayette, Indiana 47901

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert S. Guenther, 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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