



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

APR 11 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5744

Richard Binder
Ottawa, L.L.C.
3040 Finley Rd., Suite 250
Downers Grove, Illinois

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0007

Dear Mr. Binder:

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 April 11, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$20,060 is to be paid in the manner prescribed in paragraphs 39, 40, and 41. Please be certain that the number **BD 2750747X008** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 11, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for Anthony J. Restaino

Joana Bezerra
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Jacqueline Clark, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2007-0007
)	
Ottawa, L.L.C.,)	Proceeding to Assess a Civil Penalty
)	under Section 16(a) of the Toxics
)	Substances Control Act,
Respondent.)	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 the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18(b)(2) and (3) of 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 (2006).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. Respondent is Ottawa, L.L.C., with a place of business located at 3040 Finley Rd., Suite 250, Downers Grove, Illinois 60515.
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. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Statutory and Regulatory Background

7. Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

8. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. 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).

9. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

10. 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.

11. 40 C.F.R. § 745.103 defines “owner” 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.

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)(1) of the Disclosure Rule requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a lead warning statement before a lessee is obligated under the contract to lease target housing.

15. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

16. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

17. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

18. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.

19. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects the

violator to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

Factual Allegations

20. At all times relevant to this Complaint, Respondent held legal title to “residential real property,” as defined in TSCA Section 401(15), 15 U.S.C. § 2681(15), located at 600 E. McKinley Road, Ottawa, Illinois 61350 (Apartment Building), and therefore, was the “owner,” as defined in 40 C.F.R. § 745.103, of the Apartment Building.

21. The Apartment Building and each unit within the Apartment Building are “target housing” as defined in 40 C.F.R. § 745.103.

22. On the following dates, Respondent entered into the following three written lease agreements (contracts) with individuals for the lease of units in the Apartment Building:

Address	Apartment Number	Date of Lease
606 E. McKinley Road	Apt. 1C	June 13, 2001
604 E. McKinley Road	Apt. 3D	September 14, 2001
600 E. McKinley Road	Apt. 3A	December 5, 2001

23. Each of the three contracts referenced in the above paragraph covered a term of occupancy greater than 100-days.

24. Respondent, as the owner of the Apartment Building, offered for lease units in its building, and individuals entered into contracts on the dates listed in paragraph 22, above. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, because it has offered the target housing referenced in paragraph 22, above for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Apartment Building, became a “lessee,” as defined in 40 C.F.R. § 745.103, because he or she entered into a agreement to lease target housing.

Alleged Violations

Counts 1-3

26. Respondent failed to include a Lead Warning Statement, either within the contract for lease of the unit or as an attachment to the contract, before the lessees at 606 E. McKinley Road, Apt. 1C, 604 E. McKinley Road Apt. 3D, and 600 E. McKinley Road, Apt. 3A were obligated under the contracts referenced in Paragraph 22, as required by 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(1).

27. Respondent's failure to include a Lead Warning Statement, either within each contract or as an attachment to each contract, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 22, above, constitutes three violations of 40 C.F.R. § 745.113(b)(1), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Counts 4-6

28. Respondent failed to include, either within the contract for the lease of the unit or as an attachment to the contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, before the lessees at 606 E. McKinley Road, Apt. 1C, 604 E. McKinley Road, Apt. 3D, and 600 E. McKinley Road, Apt. 3A were obligated under the contracts referenced in paragraph 22, as required by 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(2).

29. Respondent's failure to include a statement disclosing the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within each contract or as an attachment to each contract, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 22,

above, constitutes three violations of 40 C.F.R. § 745.113(b)(2), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Counts 7-9

30. Respondent failed to include, either within the contract for the lease of the unit or as an attachment to the contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such list exists, before the lessees at 606 E. McKinley Road, Apt. 1C, 604 E. McKinley Road, Apt. 3D, and 600 E. McKinley Road, Apt. 3A were obligated under the contracts referenced in paragraph 22, as required by 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(3).

31. Respondent's failure to include 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, either within each contract or as an attachment to each contract, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 22, above, constitutes three violations of 40 C.F.R. § 745.113(b)(3), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Counts 10-12

32. Respondent failed to include, either within the contract for the lease of the unit or as an attachment to the contract, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before the lessees at 606 E. McKinley Road, Apt. 1C, 604 E. McKinley Road, Apt. 3D, and 600 E. McKinley Road, Apt. 3A were obligated under the contracts referenced in paragraph 22, as required by 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(4).

33. Respondent's failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet, either within each contract or as an attachment to each contract, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 22, above, constitutes three violations of 40 C.F.R. § 745.113(b)(4), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Counts 13-15

34. Respondent failed to include, either within the contract for the lease of the unit or as an attachment to the contract, the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signature before the lessees at 606 E. McKinley Road, Apt. 1C, 604 E. McKinley Road, Apt. 3D, and 600 E. McKinley Road, Apt. 3A were obligated under the contracts referenced in paragraph 22, as required by 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(6).

35. Respondent's failure to include the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures, either within each contract or as an attachment to each contract, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 22, above, constitutes three violations of 40 C.F.R. § 745.113(b)(6), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Penalty Calculation

36. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil

Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997.
40 C. F. R. § 19.2 (61 Fed . Reg . 69361 (1996)).

37. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violation alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

38. In consideration of Respondent's cooperation and other factors as justice may require, U.S. EPA agrees to mitigate the proposed penalty from \$28,600 to \$20,060.

39. Respondent shall pay the \$20,060 civil penalty by cashier's or certified check payable to the "*Treasurer, United States of America,*" within 30 days after the effective date of this CAFO.

40. Respondent shall send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

41. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number.

Respondent shall write the case docket number and the BD number on the face of the check.

The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Joana Bezerra (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

42. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

43. 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

Terms of Settlement

44. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

45. 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.

46. Respondent certifies that, as of the effective date of this CAFO, it is in full compliance with the requirements of 40 C.F.R. Part 745, Subpart F, and intends to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

47. The parties consent to the terms of this CAFO.

48. This CAFO settles U.S. EPA's claims for civil penalties for violations the alleged herein.

49. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

50. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

51. The terms of the CAFO bind the Respondent and its assigns.

52. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party for whom he or she represents and to bind that party to its terms.

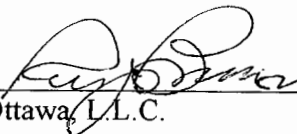
53. Each party agrees to bear its own costs and fees in this action.

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

55. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

Ottawa, L.L.C., Respondent

Date: 3-30-07

By: 
Ottawa, L.L.C.

**United States Environmental Protection Agency,
Complainant**

Date: 4/4/07

By: Anthony J. Restaino
for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

Date: 4/5/07

By: Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

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U.S. ENVIRONMENTAL PROTECTION AGENCY
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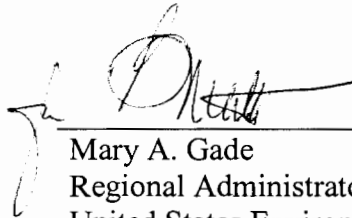
**In the Matter of:
Ottawa, L.L.C.**

Docket No. TSCA-05-2007-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 4/18/07



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Ottawa, L.L.C., was filed on April 11, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5744, a copy of the original to the Respondent:

Richard Binder
Ottawa, L.L.C.
3040 Finley Rd., Suite 250
Downers Grove, Illinois

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jacqueline Clark, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0007**

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