



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
JUL 28 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6365

Albert Belmonte, President
Wesley Realty Group, Inc.
Evanston, Illinois 60202

Consent Agreement and Final Order, Docket No. TSCA -05-2008-0018 *JS*

Dear Mr. Belmonte:

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 July 28, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,760 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number BD 2750847X010 *JS* and the docket number are written on both the transmittal letter and on the check. Payment is due by August 27, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Pamela Grace

Pamela Grace
Pesticides and Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Wesley Realty Group, Inc.)
Evanston, Illinois)

Respondent.)

Docket No. TSCA-05-2008-00822

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

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, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Wesley Realty Group, Inc., a corporation with a place of business located at 832 Custer Avenue, Evanston, Illinois 60202.

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 the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

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 U.S. 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, 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) 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. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

15. 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, agent, and lessee certifying the accuracy of their statements.

16. 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).

17. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Paragraphs 1 through 17 are realleged and incorporated here by reference.

19. Between at least 2002 and 2004, Wesley Realty Group, Inc. located at 832 Custer Avenue, Evanston, Illinois 60602, managed apartment buildings in Chicago, Illinois, at 4351 West Diversey, 4353 West Diversey, 4355 West Diversey, 4357 West Diversey, 1337 West Fargo, 5230 West Harrison, 6832 North Ashland, 6834 North Ashland, 2751 N. Kostner; in Evanston, Illinois, at 1119 Washington and in Maywood, Illinois, at 850 South 17th Avenue (Respondent's properties).

20. Respondent's properties were constructed prior to 1978.

21. Respondent's properties and each apartment unit within Respondent's properties are target housing as defined in 40 C.F.R. § 745.103.

22. On the following date(s), Respondent entered into the following 14 lease agreements (contracts) with individuals for the lease of units in Respondent's properties:

Address	Apt. No.	Date of Occupancy
5230 W. Harrison, Chicago, Illinois	2	August 1, 2003
1337 W. Fargo, Chicago, Illinois	7A	August 26, 2003
1337 W. Fargo, Chicago, Illinois	7C	May 30, 2003
1337 W. Fargo, Chicago, Illinois	7G	May 1, 2003
4357 W. Diversey, Chicago, Illinois	3	February 24, 2003
1119 Washington, Evanston, Illinois	3	July 8, 2003
6832 N. Ashland, Chicago, Illinois	3	May 1, 2003
6834 N. Ashland, Chicago, Illinois	2	September 1, 2003
1337 W. Fargo, Chicago, Illinois	2F	December 2, 2003
1337 W. Fargo, Chicago, Illinois	2F	March 6, 2003
4355 W. Diversey, Chicago, Illinois	3	January 7, 2003
2751 N. Kostner, Chicago, Illinois	3	July 22, 2003
1337 W. Fargo, Chicago, Illinois	5A	May 21, 2004
4355 W. Diversey, Chicago, Illinois	2	April 14, 2005

23. Each of the 14 contracts referenced in paragraph 22, above, covered a term of occupancy greater than 100-days.

24. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because it offered the target housing, referred to in paragraph 22, above, for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing, referred to in paragraph 22, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

26. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's properties identified in paragraph 22, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent 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 identified in paragraph 22, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent 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 have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent's properties identified in paragraph 22, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. 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 (b)(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 identified in paragraph 22, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondent failed to include the signatures of the lessor, agent, 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 Respondent's properties at identified in paragraph 22, 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

31. 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 \$67,760.00. 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. Complainant also considered U.S. EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007.

32. In consideration of Respondent's agreement to perform the window replacement supplemental environmental project specified below, U.S. EPA agrees to further mitigate the penalty of \$67,760.00 to \$6,776.00. Within 30 days after the effective date of this CAFO, Respondent must pay the \$6,776.00 civil penalty 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, MO 63197-9000

33. 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-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Jeffrey A. Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

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

35. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 48, below, U.S. 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.

36. 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 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

37. Respondent must complete a supplemental environmental project (SEP) designed to protect the health of the tenants by eliminating lead-based paint hazards in the dwelling unit by replacing windows in the target housing. Window sashes, tracks, and the space between the interior window and the screen/storm window are the most common hazards areas.

38. Within 12 months after the effective date of this CAFO, Respondent must complete a window replacement SEP designed to protect tenants from potential lead-based paint hazards. The SEP includes removal and disposal of all existing wood windows and replacement of those windows with new double hung vinyl windows in 14 rental properties at 821-823 Dobson Avenue, Evanston, Illinois (a total of 197 double hung windows); and replacing windows in 24 rental properties and 6 basement windows at 2525 Eastwood Avenue, Evanston, Illinois (a total of 189 double hung windows and 6 basement windows). A licensed lead-based paint inspector employed by Respondent will oversee all phases of the SEP work. Respondent shall also perform lead clearance testing as required by the Illinois Lead Poisoning Prevention Act, 410 ILCS 45/1 et seq. (2000)(ILPPA) and the Department of Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Guidelines).

39. Respondent must spend at least \$ \$60,984.00 to complete the SEP, to perform lead clearance testing as required by ILPPA and the Guidelines, and the risk assessment required by the Guidelines.

40. 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.

41. Respondent must conduct the SEP in accordance with all applicable federal and state work practice and notification requirements including, but not limited to, the Guidelines and the ILPPA.

42. The U.S. EPA may inspect the properties at 821-823 Dobson Avenue, Evanston, Illinois, and 2525 Eastwood Avenue, Evanston, Illinois, at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

43. Respondent must submit a SEP completion report to the U.S. EPA for the property located at 821-823 Dobson Avenue, Evanston, Illinois, on or before November 30, 2008. Respondent must submit a SEP completion report to the U.S. EPA for the property located at 2525 Eastwood Avenue, Evanston, Illinois, on or before June 30, 2009. Both of these reports must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;

- c. 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;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

44. Respondent must submit all notices and reports required by this CAFO by first class mail to Pamela Grace of the Pesticides and Toxics Compliance Section at the address provided in paragraph 33, above.

45. Each report that Respondent submits, as provided by this CAFO, 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.

46. Following receipt of the SEP completion reports described in paragraph 43, above, U.S. 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 U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 48, below.

47. If U.S. 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 U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 48, below.

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

- a. If Respondent has spent less than the amount set forth in paragraph 39, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 39.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$25,000, in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$50,000, in addition to the penalty required under subparagraph 48.a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 38 for implementing the SEP, fails to submit timely the SEP completion reports or fails to submit

timely any other reports required in paragraph 43, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$250	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 compliance with the milestone.

49. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

50. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 32, above, and will pay interest, handling charges, and penalties on overdue amounts as specified in paragraph 36, above.

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

52. Any public statement that Respondent makes referring to the SEP must include the following language, "Wesley Realty Group, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Wesley Realty Group, Inc., for violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d."

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

- a. Respondent must notify the U.S. EPA in writing within ten 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. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. 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 delay.
- c. If the U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. 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 its 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 53.b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

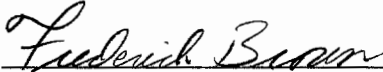
CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Complaint in resolution of the civil administrative action involving Wesley Realty Group, Inc., was filed on July 28, 2008, with the Regional Hearing Clerk (E-13J), U.S. 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 8921 6365 a copy of the original to the Respondents:

Albert Belmonte, President
Wesley Realty Group, Inc.
Evanston, Illinois 60202

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery A. Cahn, 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 60604-3590

Docket No. TSCA-05-2008-0018 22.

2008 JUL 29 10:11:45

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