

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:)	Docket No.: TSCA-03-2019-0096
)	
Franklin M. Santmyer, Jr.)	
P.O. Box 489)	Proceeding Under Sections 16(a) and
Elkins, West Virginia 26241,)	409 of the Toxic Substances Control
)	Act, 15 U.S.C. §§ 2615(a) and 2689.
RESPONDENT.)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Franklin M. Santmyer, Jr. (hereinafter “Mr. Santmyer” or “Respondent”), pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”) 42 U.S.C. § 4852d, and Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA” or the “Act”), 15 U.S.C. §§ 2615(a) and 2689, 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.
2. The violations cited herein pertain to the Respondent’s alleged failure to comply with requirements of the RLBPHRA, 42 U.S.C. §§ 4851 *et seq.*, and regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F, and entitled “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (commonly known as the “Disclosure Rule”), which statutory and regulatory provisions are enforceable pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under TSCA for the violations alleged herein.
3. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves this administrative proceeding.

II. JURISDICTION

4. The U.S. Environmental Protection Agency (“EPA” or the “Agency”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, Section 1018(b)(5) of Title X of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5., immediately above, Respondent neither admits nor denies the specific factual allegations set forth in this CAFO.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. 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.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear his own costs and attorney’s fees in connection with this proceeding.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “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.”
13. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single family dwelling, including attached structures such as porches and stoops, or a single-

family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

14. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
15. Pursuant to 40 C.F.R. § 745.103, the term “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.
16. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means 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.
17. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means 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 non-profit organizations.
18. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means “paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm²] or 0.5 percent by weight.”
19. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazards” means “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.”
20. The “[d]isclosure requirements for sellers and lessors” are set forth at 40 C.F.R. § 745.107 and provide, in pertinent part, that:
 - (a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to [40 C.F.R.] § 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

21. The certification and acknowledgment of disclosure requirements applicable to lessors are set forth at 40 C.F.R. § 745.113 and provide, in pertinent part, as follows:

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) 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. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

22. The enforcement provisions of 40 C.F.R. § 745.118(e) state that: “ Failure or refusal to comply with [40 C.F.R.] § 745.107 (disclosure requirements for sellers and lessors), [40 C.F.R.] § 745.110 (opportunity to conduct an evaluation), [40 C.F.R.] § 745.113 (certification and acknowledgment of disclosure) or [40 C.F.R.] § 745.115 (agent responsibilities) is a violation of [RLBPHRA Section 1018(b)(5),] 42 U.S.C. [§] 4852d(b)(5) and of TSCA Section 409 (15 U.S.C. [§] 2689).”

23. At all times relevant to the violations alleged herein, the premises located at 305 Country Club Road, Elkins, West Virginia 26241 (which presently has a new address of 12 Santmyer Lane, Elkins, West Virginia 26241) consisted of real property on which there was situated one building used as the home or residence for one or more persons.

24. The building situated on the residential real property located at 305 Country Club Road, Elkins, West Virginia 26241 (presently 12 Santmyer Lane, Elkins, West Virginia 26241) is a two-story house containing a single-family “residential dwelling” unit constructed prior to 1978 that presently is not, and at the time of the violations alleged herein was not, housing used for the elderly or persons with disabilities or a 0-bedroom dwelling (as defined by 40 C.F.R. § 745.103), and is and was then “target housing” within the meaning of RLBPHRA Sections 1004(23) and (27), 42 U.S.C. § 4581b(23) and (27), TSCA Section 401(14) and (17), 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.
25. Respondent is an individual person, and a sole proprietor in business, with a mailing address of P.O. Box 489, Elkins, West Virginia 26241.
26. At the time of the violations alleged herein, Respondent had legal title to the building situated on the real property located at 305 Country Club Road, Elkins, West Virginia 26241 (presently 12 Santmyer Lane, Elkins, West Virginia 26241), including the “residential dwelling” thereon, and was the “owner” of “target housing” as those terms are defined by 40 C.F.R. § 745.103.
27. Respondent entered into a written contract, dated June 24, 2014 and executed on July 27, 2014 (the “Lease Agreement”), with an individual lessee (hereinafter referred to as the “Lessee”) to rent and/or lease the “residential dwelling” at 305 Country Club Road, Elkins, West Virginia 26241 (presently 12 Santmyer Lane, Elkins, West Virginia 26241), hereinafter, the “Target Housing”.
28. Pursuant to the Lease Agreement, the rent and/or lease of the Target Housing by the Lessee began on August 1, 2014 and operated on a month-by-month basis thereafter, renewable each new month without re-execution, and was not limited to 100 days or less.
29. On information and belief, the Target Housing Lessee and the Lessee’s minor children moved into the Target Housing “residential dwelling” on or about August 1, 2014 and continued to reside therein until at least November, 2017.
30. The aforementioned Lease Agreement did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease for target housing.
31. At the time that the Lease Agreement for the Target Housing was executed, and at all times relevant to the violations alleged herein, Respondent was the “owner” of, and the “lessor” of, “target housing” (*i.e.*, the Target Housing”) and the Lessee was a “lessee” of “target housing” (*i.e.*, the Target Housing), as those terms are defined in 40 C.F.R. § 745.103.

32. The Target Housing contained “lead-based paint” as that term is defined in 40 C.F.R. § 745.103, during the term of the Lease Agreement.
33. An environmental lead assessment of the Target Housing was performed on June 23, 2015 by the West Virginia Department of Health and Human Resources and that Department’s subsequent June 24, 2015 “Lead-Based Paint Assessment” reported, among other things, that dust wipe samples collected from two interior horizontal surfaces, a window sill and a window casing exceeded West Virginia clearance standards for lead dust.
34. On May 9, 2018, EPA received a complaint regarding alleged Disclosure Rule noncompliance in the Respondent’s lease of the Target Housing to the Lessee.
35. Based upon the May 9, 2018 complaint made against the Respondent and additional information provided in support thereof, a duly authorized EPA representative conducted a physical inspection of the Target Housing, performed an associated Lease Agreement records review, and interviewed the Respondent on June 12, 2018.

V. VIOLATIONS ALLEGED

COUNT 1

***Failure to Comply with the Requirements of
40 C.F.R. § 745.107(a)(1)***

36. The allegations contained in paragraphs 1 through 35, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
37. Pursuant to the “disclosure requirements for sellers and lessors” set forth at 40 C.F.R. § 745.107(a)(1), which requirements are recited fully in paragraph 20, above, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee is obligated under any contract to lease target housing that is not otherwise an exempt transaction pursuant to 40 C.F.R. § 745.101.
38. On July 27, 2014, the Respondent executed the Target Housing Lease Agreement contract (dated June 24, 2014) with the Lessee without first having provided the Lessee with the EPA-approved lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in West Virginia by EPA.
39. Respondent’s failure to provide the Target Housing Lessee with an EPA-approved lead hazard information pamphlet before the lessee became obligated to lease the Target Housing under the terms of the Lease Agreement contract constitutes a violation of 40 C.F.R. § 745.107(a)(1), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNT 2
***Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(1)***

40. The allegations contained in paragraphs 1 through 39, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
41. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(1), which requirements are recited fully in paragraph 21, above, each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”
42. Respondent did not include as an attachment to, or as a part of, the Target Housing Lease Agreement dated June 24, 2014 and executed on July 27, 2014 a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1).
43. Respondent’s failure to include as an attachment to, or as a part of, the Target Housing Lease Agreement a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), constitutes a violation of 40 C.F.R. § 745.113(b)(1), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNT 3
***Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(2)***

44. The allegations contained in paragraphs 1 through 43, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
45. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(2), which requirements are recited fully in paragraph 21, above, each contract to lease target housing shall include, as an attachment 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.
46. The Target Housing Lease Agreement contract dated June 24, 2014, and executed by the Respondent, as Lessor, and by the Lessee on July 27, 2014, failed to include as an attachment, or within that contract, any statement disclosing the presence of known lead-based paint in the Target Housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Target Housing by the Respondent, as Lessor.

47. Respondent failed to ensure that a statement disclosing the presence of known lead-based paint, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, in the Target Housing was included as an attachment to, or within, the Target Housing Lease Agreement contract executed on July 27, 2014, as required by 40 C.F.R. § 745.113(b)(2).
48. Respondent's failure to ensure that an appropriate statement disclosing the presence of known lead-based paint, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, in the Target Housing was included as an attachment to, or within, the Target Housing Lease Agreement contract on or before its July 27, 2014 execution, constitutes a violation of 40 C.F.R. § 745.113(b)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

VI. CIVIL PENALTY

49. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Twenty Five Thousand Dollars (\$25,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
50. The Parties represent that the settlement terms are reasonable and are based upon EPA'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's 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* (December 2007). Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, the January 11, 2018 and the subsequent March 4, 2019 Memoranda by EPA Assistant Administrator Susan Parker Bodine, respectively entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Effective January 15, 2018)* and *Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*, and *Transmittal of the 2019 Civil Monetary Penalty Inflation Adjustment Rule*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty, pursuant to EPA's June 29, 2015 *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Proceeding*. This analysis was based upon financial information submitted to Complainant by Respondent, including but not necessarily limited to:
- a. U.S. Individual Income tax return Forms 1040 and K1, for each of calendar years 2016, 2017 and 2018;
 - b. a completed INDIPAY Data Request Form;

- c. a Statement of Financial Condition; and
 - d. personal Bank Statements for the period of June, 2018 through November, 2018.
51. Complainant has relied upon the financial information provided by Respondent and identified in the preceding Paragraph. Based upon an analysis of the same, it is Complainant's conclusion that the Respondent has established that he is unable to pay a civil penalty in the amount set forth in Paragraph 49, above, within thirty (30) days of the date on which a fully-executed and filed CAFO is mailed or hand-delivered to Respondent and that a payment plan of the nature and duration set forth below is necessary and appropriate.
52. The civil penalty of **Twenty Five Thousand Dollars (\$25,000.00)**, set forth in Paragraph 49, above, may be paid in twenty-four (24) monthly installments, with applicable interest at the rate of one per cent (1%) per annum on the outstanding principal balance, in accordance with the payment schedule, instructions and illustrative chart set forth immediately below:
- a. **1st Payment:** The first payment, in the amount of **Five Thousand Dollars (\$5,000.00)**, consisting of a principal payment of \$5,000.00 and an interest payment of \$ 0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent but, in no event later than July 15, 2019.
 - b. **Payments 2 – 23:** Each of the following twenty-two payments (*i.e.*, each of payments 2 through 23), consisting of a principal and an interest amount delineated in the Chart, below, shall each be in the total amount of **Eight Hundred and Eighty-Six Dollars and Four Cents (\$ 886.04)** and shall be paid on or before the 15th day of each successive month, from August 15, 2019 through May 15, 2021.
 - c. **Payment 24:** A final payment (*i.e.*, payment 24), consisting of a principal and an interest amount delineated in the Chart, below, shall be in the total amount of **Seven Hundred and Nine Dollars and Sixty-Nine Cents (\$ 709.69)**, and shall be paid on or before June 15, 2021.
 - d. Pursuant to the provisions of this CAFO, Respondent will remit a total civil penalty (principal) of Twenty Five Thousand Dollars (\$25,000.00) and interest in the amount of Two Hundred and Two Dollars and Fifty-Seven Cents (\$202.57), in accordance with the installment payment schedule described above and illustrated in the Chart, immediately below.

Payment No.	Principal Amount	Interest	Due Date	Payment Amount Due
1	\$ 5,000.00	\$ 0.00	7/15/2019	\$ 5,000.00
2	\$ 868.82	\$17.22	8/15/2019	\$ 886.04
3	\$ 869.57	\$16.47	9/15/2019	\$ 886.04
4	\$ 870.82	\$15.22	10/15/2019	\$ 886.04
5	\$ 871.06	\$14.98	11/15/2019	\$ 886.04
6	\$ 872.27	\$13.77	12/15/2019	\$ 886.04
7	\$ 872.57	\$13.47	1/15/2020	\$ 886.04
8	\$ 873.32	\$12.72	2/15/2020	\$ 886.04
9	\$ 874.84	\$11.20	3/15/2020	\$ 886.04
10	\$ 874.82	\$11.22	4/15/2020	\$ 886.04
11	\$ 875.91	\$10.13	5/15/2020	\$ 886.04
12	\$ 876.33	\$ 9.71	6/15/2020	\$ 886.04
13	\$ 877.37	\$ 8.67	7/15/2020	\$ 886.04
14	\$ 877.84	\$ 8.20	8/15/2020	\$ 886.04
15	\$ 878.60	\$ 7.44	9/15/2020	\$ 886.04
16	\$ 879.57	\$ 6.47	10/15/2020	\$ 886.04
17	\$ 880.11	\$ 5.93	11/15/2020	\$ 886.04
18	\$ 881.03	\$ 5.01	12/15/2020	\$ 886.04
19	\$ 881.63	\$ 4.41	1/15/2021	\$ 886.04
20	\$ 882.39	\$ 3.65	2/15/2021	\$ 886.04
21	\$ 883.43	\$ 2.61	3/15/2021	\$ 886.04
22	\$ 883.91	\$ 2.13	4/15/2021	\$ 886.04
23	\$ 884.71	\$ 1.33	5/15/2021	\$ 886.04
24	\$ 709.08	\$ 0.61	6/15/2021	\$ 709.69
Total:	\$25,000.00	\$202.57		\$25,202.57

53. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in Paragraph 52, immediately 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, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 57 through 60, below, in the event of any such failure or default.

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54. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

55. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, 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 each Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2019-0096**;
- 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. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC30)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

56. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed to EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

57. 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 CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
58. INTEREST: Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct 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 rate in accordance with 40 C.F.R. § 13.11(a).
59. ADMINISTRATIVE COSTS: 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.
60. LATE PAYMENT PENALTY: 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).
61. Respondent agrees not to deduct, for federal tax purposes, all or any portion of the civil monetary penalty specified in this CAFO.

VII. GENERAL SETTLEMENT CONDITIONS

62. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
63. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO,

including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent is aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VIII. CERTIFICATION OF COMPLIANCE

64. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

IX. OTHER APPLICABLE LAWS

65. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the RLBPHRA or of TSCA, or any regulations promulgated thereunder.

X. RESERVATION OF RIGHTS

66. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. 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. 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). EPA reserves any rights and remedies available to it under the RLBPHRA and TSCA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

XI. EXECUTION /PARTIES BOUND

67. This CAFO shall apply to and be binding upon the EPA, the Respondent and his employees, successors, agents and assigns. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

*In the Matter of:
Franklin M. Santmyer, Jr.*

*Consent Agreement
Docket No. TSCA-03-2019-0096*

XII. EFFECTIVE DATE

68. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

69. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties 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.

For Respondent, Franklin M. Santmyer, Jr.:

Date: 5/31/2019

By:



Franklin M. Santmyer, Jr.

In the Matter of:
Franklin M. Santmyer, Jr.

Consent Agreement
Docket No. TSCA-03-2019-0096

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JUN 10 2019

By: 
Karen Melvin
Director Enforcement and Compliance Assurance Division
U.S. EPA - Region III

Attorney for Complainant:

Date: 6/5/2019

By: 
A.J. D'Angelo
Sr. Assistant Regional Counsel
U.S. EPA - Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

U.S. EPA-REGION 3-RHC
FILED-20JUN2019pm2:30

In the Matter of:)	Docket No.: TSCA-03-2019-0096
)	
Franklin M. Santmyer, Jr.)	
P.O. Box 489)	Proceeding Under Sections 16(a) and
Elkins, West Virginia 26241,)	409 of the Toxic Substances Control
)	Act, 15 U.S.C. §§ 2615(a) and 2689.
RESPONDENT.)	
)	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Franklin M. Santmyer, Jr. have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), together with EPA’s *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* (December 2007), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, the related January 11, 2018 and March 4, 2019 Memoranda by EPA Assistant Administrator Susan Parker Bodine and EPA’s June 29, 2015 *Guidance on Evaluating a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Proceeding*.

NOW, THEREFORE, PURSUANT TO Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. § 4852d, and Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, with respect to violations of the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property requirements of 40 C.F.R. Part 745, Subpart F, and Section 22.18(b)(3) of the *Consolidated Rules of Practice*, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY FIVE THOUSAND DOLLARS (\$25,00.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the RLBPHRA, TSCA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

June 20, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC
FILED-20JUN2019PM2:30

In the Matter of:) Docket No.: TSCA-03-2019-0096
)
Franklin M. Santmyer, Jr.)
)
P.O. Box 489) Proceeding Under Sections 16(a) and
) 409 of the Toxic Substances Control
Elkins, West Virginia 26241,) Act, 15 U.S.C. §§ 2615(a) and 2689.
)
RESPONDENT.)

CERTIFICATE OF SERVICE

I certify that on JUN 20 2019, the original and one (1) copy of foregoing *Consent Agreement* and of the associated *Final Order*, each were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served true and correct copies of the same to each of the following persons, in the manner specified below, at the following addresses:

Copies served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, (Article No. 7001 2510 0001 1042 9498), to the following person at the following address:

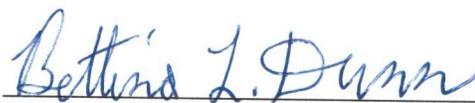
Mr. Franklin M. Santmyer, Jr.
P.O. Box 489
Elkins, West Virginia 26241
(Respondent)

Copies served via **Hand Delivery or Inter-Office Mail** to:

A.J. D'Angelo, Esq.
Sr. Assistant Regional Counsel (3RC30)
Air & Toxics Branch
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
5th Floor, Office #110
Philadelphia, PA 19103-2029
(Attorney for Complainant)

JUN 20 2019

Date



Regional Hearing Clerk (3RC20)
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Tracking NO. 70012510 0001 1042 9498