

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
	:	
Broadway Associates,	:	U.S. EPA Docket No.
(a/k/a Broadway Avenue Associates),	:	
Frank B. Kirsch, III and Michael R. Kirsch,	:	TSCA-03-2008-0052
General Partners,	:	
Olde Hampton, LLC, and	:	
MBA-View, LLC,	:	
	:	
Respondents.	:	
	:	
534 Hampton Place,	:	Proceeding under Sections 409
Portsmouth, Virginia 23704	:	and 16(a) of the Toxic Substances
	:	Control Act, 15 U.S.C. §§ 2689
and	:	and 2615(a)
	:	
263 A View Avenue,	:	
Norfolk, Virginia 23503,	:	
	:	
Target Housing.	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III (“Complainant” or “EPA”) and Broadway Associates, a Virginia general partnership, Olde Hampton, LLC and MBA-View, LLC (collectively, “Respondents”) pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), 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, with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondents’ alleged failure to comply with requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F, 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.

3. In accordance with 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, EPA hereby simultaneously commences and resolves, as part of the settlement set forth herein, the claims identified in Section IV (“Findings of Fact and Conclusions of Law”) of this Consent Agreement.

II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 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, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO”.
6. Except as provided in Paragraph 5, immediately above, for the purposes of this proceeding only, Respondents neither admit nor deny the specific factual allegations set forth in this Consent Agreement and the attached Final Order.
7. Respondents agree 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, Respondents hereby expressly waive 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. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney’s fees.

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*, EPA 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. The properties located at 534 Hampton Place, Portsmouth, Virginia and at 263 A View Avenue, Norfolk, Virginia, each consist of and, at all times relevant to the violations alleged herein consisted of, real property on which there was situated a residential dwelling in the form of a structure containing more than one separate residential dwelling unit, and in which each such unit was used or occupied, or was intended to be used or occupied, in whole or in part, as the residence of one or more persons.
16. Each of the residential dwellings situated on the residential real property located at 534 Hampton Place, Portsmouth, Virginia and at 263 A View Avenue, Norfolk, Virginia, is housing constructed prior to 1978.
17. Each of the residential dwellings situated on the residential real property located at 534 Hampton Place, Portsmouth, Virginia and at 263 A View Avenue, Norfolk, Virginia, consists of housing 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.
18. Each of the residential dwellings situated on the residential real property located at 534 Hampton Place, Portsmouth, Virginia and at 263 A View Avenue, Norfolk, Virginia, is “target housing” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4581b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

19. 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.
20. 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.
21. Pursuant to 40 C.F.R. § 745.103, the term “agent” means “any party who enters into a contract with a seller or 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. This term does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser.”
22. 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.
23. 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.”
24. 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.”
25. The disclosure 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.

26. 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.

(3) 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 have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this [40 C.F.R.] section [745.113] and the lead hazard information pamphlet required under 15 U.S.C. [§ 2686].

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the [lessor's] obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

* * *

(c) *Retention of Certification and Acknowledgment Information.*

(1) * * * The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this [40 C.F.R.] section [745.113] for no less than 3 years from the commencement of the leasing period.

27. Agent responsibilities are set forth at 40 C.F.R. § 745.115 and require, in pertinent part, that:

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

* * *

(2) Ensure that the seller or lessor has performed all activities required under [40 C.F.R.] §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of [40 C.F.R.] §§ 745.107, 745.110, and 745.113.

28. The enforcement provisions of 40 C.F.R. § 745.118(e) and (f) state that:

* * *

(e) 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).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart [40 C.F.R. Part 745, Subpart F], the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than \$10,000.

29. At all times relevant to the violations alleged herein, Frank B. Kirsch, III and Michael R. Kirsch have been engaged and have participated as general partners in a Commonwealth of Virginia general partnership that they formed on March 27, 1980 under the name Broadway Associates, also known as Broadway Avenue Associates (hereinafter "Broadway" or "Respondent Broadway"), with a principle office in Portsmouth, Virginia, in order to "purchase, acquire, own, build upon, alter, repair, rent, lease, sell, mortgage, and otherwise deal with and dispose of real and personal property, of any kind or description."
30. On or about July 1, 2005 Respondent Olde Hampton, LLC, a Virginia limited liability corporation owned equally by Frank B. Kirsch, III and Michael R. Kirsch, was authorized to transact business by the Virginia State Corporation Commission.
31. On or about July 1, 2005 Respondent MBA-View, LLC, a Virginia limited liability corporation owned equally by Frank B. Kirsch, III and Michael R. Kirsch, was authorized to transact business by the Virginia State Corporation Commission.
32. From on or about March 22, 1991 through August 25, 2005, Respondent Broadway was the owner of the target housing and residential dwelling units located at 534 Hampton Place, Portsmouth, Virginia and at 263 A View Avenue, Norfolk, Virginia and was the lessor of those target housing residential dwelling units, as identified in the Paragraph 37 chart, below, at the time that lease agreements constituting Lease Transactions #1 - #4, #6 - #12, #16 - #18 and #21, respectively, were entered into by and between Broadway and various target housing lessees.
33. On or about September 16, 2005, Respondent Olde Hampton, LLC acquired title to, and became the owner of the real property and of the target housing and residential dwelling units located at 534 Hampton Place, Portsmouth, Virginia upon distribution and transfer of the same from Respondent Broadway to Frank B. Kirsch, III and Michael R. Kirsch, individually, and by their immediate transfer of the same to Respondent Olde Hampton, LLC.
34. From on or about September 16, 2005 through the present date, Respondent Olde Hampton, LLC has been the owner of the target housing and residential dwelling units located at 534 Hampton Place, Portsmouth, Virginia and was the lessor of one of the target housing residential dwelling units identified in the Paragraph 37 chart, below, at the time that a lease agreement constituting Lease Transaction #5, was entered into by and between Respondent Olde Hampton, LLC and a target housing lessee.
35. On or about September 16, 2005, Respondent MBA-View, LLC acquired title to, and became the owner of the real property and of the target housing and residential dwelling units located at 263 A View Avenue, Norfolk, Virginia upon distribution and transfer of the same from Respondent Broadway to Frank B. Kirsch, III and Michael R. Kirsch,

individually, and by their immediate transfer of the same to Respondent MBA-View, LLC.

36. From on or about September 16, 2005 through the present date, Respondent MBA-View, LLC has been the owner of the target housing and residential dwelling units located at 263 A View Avenue, Norfolk, Virginia and was the lessor of those target housing residential dwelling units, as identified in the Paragraph 37 chart, below, at the time at the time that lease agreements constituting Lease Transactions #13 - #15 and #19 - #20, respectively, were entered into by and between Respondent MBA-View, LLC and various target housing lessees.
37. As set forth with particularity in Paragraphs 32, 34 and 36, above, one of the Respondents was the owner and lessor of the target housing residential dwelling units identified in the Chart below when each of the following twenty-one (21) lease agreements (identified by Count Numbers, Lessor, Target Housing Address & Unit, Lease Date and corresponding Lease Transaction Number) was entered into by and between each such Respondent and one or more target housing lessees:

Count Numbers	Lessor	Target Housing Address & Unit	Lease Date	Lease Trans. No.
1, 17, 33, 52, 72, 92	Broadway (F. & M. Kirsch)	534 Hampton Place, Unit 2	05/16/2003	#1
2, 18, 34, 53, 73, 93	Broadway (F. & M. Kirsch)	534 Hampton Place, Unit 2	05/21/2004	#2
3, 19, 35, 54, 74, 94	Broadway (F. & M. Kirsch)	534 Hampton Place, Unit 2	08/03/2004	#3
4, 20, 36, 55, 75, 95	Broadway (F. & M. Kirsch)	534 Hampton Place, Unit 2	09/18/2004	#4
37, 76, 96	Olde Hampton, LLC	534 Hampton Place, Unit 2	01/15/2007	#5
5, 21, 38, 56, 77, 97	Broadway (F. & M. Kirsch)	263 A View Street, #1	02/02/2004	#6
6, 22, 39, 57, 78, 98	Broadway (F. & M. Kirsch)	263 A View Street, #1	03/02/2005	#7
7, 23, 40, 58, 79, 99	Broadway (F. & M. Kirsch)	263 A View Street, #2	10/18/2003	#8
8, 24, 41, 59, 80, 100	Broadway (F. & M. Kirsch)	263 A View Street, #3	01/16/2003	#9
9, 25, 42, 60, 81, 101	Broadway (F. & M. Kirsch)	263 A View Street, #3	05/09/2003	#10
10, 26, 43, 61, 82, 102	Broadway (F. & M. Kirsch)	263 A View Street, #3	09/09/2003	#11
11, 27, 44, 62, 83, 103	Broadway (F. & M. Kirsch)	263 A View Street, #3	02/16/2004	#12
45, 63, 84, 104	MBA-View, LLC	263 A View Street, #3	11/03/2005	#13
64	MBA-View, LLC	263 A View Street, #2	09/30/2005	#14
12, 65, 85	MBA-View, LLC	263 A View Street, #4	04/13/2007	#15
13, 28, 46, 66, 86, 105	Broadway (F. & M. Kirsch)	263 A View Street, #5	05/17/2003	#16
14, 29, 47, 67, 87, 106	Broadway (F. & M. Kirsch)	263 A View Street, #5	02/13/2004	#17
15, 30, 48, 68, 88, 107	Broadway (F. & M. Kirsch)	263 A View Street, #5	06/04/2004	#18
31, 49, 69, 89, 108	MBA-View, LLC	263 A View Street, #5	09/30/2005	#19
50, 70, 90, 109	MBA-View, LLC	263 A View Street, #5	09/01/2006	#20
16, 32, 51, 71, 91, 110	Broadway (F. & M. Kirsch)	263 A View Street, #6	07/23/2004	#21

COUNTS 1 - 16

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

Lease Transactions #1 - #4, #6 - #12, #15 - #18 and #21

38. The allegations contained in Paragraphs 1 through 37, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
39. 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 25, above, provide that before a 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, the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet, or an equivalent pamphlet that has been approved for use in that State by EPA.
40. At no time before any lessee of the target housing units which are the subject of Lease Transactions #1 - #4, #6 - #12, #15 - #18 and #21 became obligated to rent and/or lease such target housing did any Respondent provide any such target housing lessee with an EPA-approved lead hazard information pamphlet, or an equivalent pamphlet that has been approved for use in Virginia by EPA, as required by 40 C.F.R. § 745.107(a)(1).
41. The failure of Respondent Broadway to provide an EPA-approved lead hazard information pamphlet, or an equivalent pamphlet that has been approved for use in Virginia by EPA, to the lessees involved in Lease Transactions #1 - #4, #6 - #12, #16 - #18 and #21, respectively, before each respective lessee became obligated to rent and/or lease the target housing, constitutes fifteen (15) separate violations 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).
42. The failure of Respondent Olde Hampton, LLC to provide an EPA-approved lead hazard information pamphlet, or an equivalent pamphlet that has been approved for use in Virginia by EPA, to the lessee involved in Lease Transaction #15 before such lessee became obligated to rent and/or lease the target housing, 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).
43. Each of the sixteen (16) violations alleged in the two preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 1 through 16, as summarized and delineated in the Paragraph 37 chart, above.

COUNTS 17 - 32
Violations of 40 C.F.R. § 745.113(b)(1)
Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(1)
In Relation To
Lease Transactions #1- #4, #6 - #12, #16 - #19 and #21

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)(1), which requirements are recited fully in Paragraph 26, above, each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the language set forth in 40 C.F.R. § 745.113(b)(1).
46. Lease Agreements #1- #4, #6 - #12, #16 - #19 and #21 failed to include, as an attachment to or within each such contract, a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1).
47. Respondent Broadway failed to include a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment to, or within, Lease Agreements #1- #4, #6 - #12, #16 - #18 and #21 and Respondent MBA-View, LLC failed to include a Lead Warning Statement containing such language as an attachment to, or within, Lease Agreement #19.
48. The failure of Respondent Broadway to include a Lead Warning Statement containing the language set forth in 40 C.F.R. § 745.113(b)(1) either within, or as an attachment to, Lease Agreements #1- #4, #6 - #12, #16 - #18 and #21, constitutes fifteen (15) separate violations 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).
49. The failure of Respondent MBA-View, LLC, to include a Lead Warning Statement containing the language set forth in 40 C.F.R. § 745.113(b)(1) either within, or as an attachment to, Lease Agreement #19, 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).
50. Each of the sixteen (16) violations alleged in the two preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 17 through 32, as summarized and delineated in the chart set forth in the Paragraph 37 chart, above.

COUNTS 33 - 51

**Violations of 40 C.F.R. § 745.113(b)(2)
Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(2)
In Relation To
Lease Transactions #1 - #13 and #16 - #21**

51. The allegations contained in Paragraphs 1 through 50, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
52. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(2), which requirements are recited fully in Paragraph 26, 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 (including any additional information available concerning 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.
53. Lease Agreements #1 - #13 and #16 - #21 failed to include, as an attachment to or within each such contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the respective target housing or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective target housing.
54. Respondent Broadway failed to include as an attachment to, or within, each of Lease Agreements #1- #4, #6 - #12, #16 - #18 and #21 either a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the respective target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective target housing, as required by 40 C.F.R. § 745.113(b)(2), and Respondents Olde Hampton, LLC and MBA-View, LLC similarly failed to include either such statement as an attachment to, or within, Lease Agreement #5 and Lease Agreements #13 and #19 - #20, respectively.
55. The failure of Respondent Broadway to include as an attachment to, or within, each of Lease Agreements #1- #4, #6 - #12, #16 - #18 and #21, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the respective target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective target housing, constitutes fifteen (15) separate violations of 40 C.F.R. § 745.113(b)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPBRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
56. The failure of Respondent Olde Hampton, LLC to include as an attachment to, or within, Lease Agreement #5, a statement disclosing the presence of known lead-based paint

and/or lead-based paint hazards in the respective target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective target housing, 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).

57. The failure of Respondent MBA-View, LLC to include as an attachment to, or within, each of Lease Agreements #13 and #19 - #20, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the respective target housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective target housing, constitutes three (3) violations 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).
58. Each of the nineteen (19) violations alleged in the three preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 33 through 51, as summarized and delineated in the chart set forth in Paragraph 37, above.

COUNTS 52 - 71

Violation of 40 C.F.R. § 745.113(b)(3)
Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(3)
In Relation To
Lease Transactions #1 - #4 and #6 - #21

59. The allegations contained in Paragraphs 1 through 58, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
60. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(3), which requirements are recited fully in Paragraph 26, above, each contract to lease target housing shall include, as an attachment 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 have been provided to the lessee and, if no such records or reports are available, the lessor shall so indicate.
61. Lease Agreements #1 - #4 and #6 - #21 failed to include, as an attachment to or within each such contract, either a list of those records or reports pertaining to lead-based paint and/or lead-based paint hazards in the respective target housing that were available to the lessor at the time of such lease transaction, or an indication that no such records or reports were available to the respective lessor at the time of the lease transaction, as required by 40 C.F.R. § 745.113(b)(3).

62. At the time of Lease Agreements #1 - #4 and #6 - #21, respectively, there were no records or reports available to the Respondents which pertained to lead-based paint and/or lead-based paint hazards in the target housing that was the subject of each corresponding lease transaction.
63. Respondent Broadway failed to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21 the required indication that there were no records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the respective target housing at the time of each corresponding lease transaction and Respondent MBA-View, LLC similarly failed to provide such required indication as an attachment to, or within, each of Lease Agreements #13 - #15 and #19 - #20.
64. The failure of Respondent Broadway to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21 any indication that there were no records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the respective target housing at the time of each corresponding lease transaction constitutes fifteen (15) separate violations of 40 C.F.R. § 745.113(b)(3), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
65. The failure of Respondent MBA-View, LLC to include as an attachment to, or within, each of Lease Agreements #13 - #15 and #19 - #20 any indication that there were no records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the respective target housing at the time of each corresponding lease transaction constitutes five (5) separate violations of 40 C.F.R. § 745.113(b)(3), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
66. Each of the twenty (20) violations alleged in the two preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 52 through 71, as summarized and delineated in the chart set forth in Paragraph 37, above.

COUNTS 72 - 91

**Violations of 40 C.F.R. § 745.113(b)(4)
*Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(4)
In Relation To
Lease Transactions #1 - #13 and #15 - #21***

67. The allegations contained in Paragraphs 1 through 66, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

68. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(4), which requirements are recited fully in Paragraph 26, above, each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of 40 C.F.R. § 745.113 and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
69. Lease Agreements #1 - #13 and #15 - #21 failed to include, as an attachment to or within each such contract, a statement by the respective target housing lessee(s) affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3), and of the lead hazard information pamphlet required under 15 U.S.C. § 2686.
70. Respondent Broadway failed to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21 a statement for the respective target housing lessee(s) to sign, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3), and of the lead hazard information pamphlet required under 15 U.S.C. § 2686, respectively, as required by 40 C.F.R. § 745.113(b)(4), and Respondents Old Hampton, LLC and MBA-View, LLC similarly failed to include such required statement for the respective target housing lessee(s) to sign in Lease Agreement #5 and in Lease Agreements #13, #15 and #19 - #20, respectively.
71. The failure of Respondent Broadway to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21, a statement for the respective target housing lessee(s) to sign, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3), and of the lead hazard information pamphlet required under 15 U.S.C. § 2686, respectively, constitutes fifteen (15) separate violations of 40 C.F.R. § 745.113(b)(4), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
72. The failure of Respondent Old Hampton, LLC to include as an attachment to, or within, Lease Agreement #5 a statement for the respective target housing lessee to sign, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3), and of the lead hazard information pamphlet required under 15 U.S.C. § 2686, respectively, constitutes a violation of 40 C.F.R. § 745.113(b)(4), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
73. The failure of Respondent MBA-View, LLC to include as an attachment to, or within, each of Lease Agreements #13, #15 and #19 - #20, a statement for the respective target housing lessee(s) to sign, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3), and of the lead hazard information pamphlet required under 15 U.S.C. § 2686, respectively, constitutes four (4) separate violations of 40 C.F.R. § 745.113(b)(4), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

74. Each of the twenty (20) violations alleged in the three preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 72 through 91, as summarized and delineated in the chart set forth in Paragraph 37, above.

COUNTS 92 - 110
Violations of 40 C.F.R. § 745.113(b)(6)
Failure to Comply with the Requirements of
40 C.F.R. § 745.113(b)(6)
In Relation To
Lease Transactions #1 - #13 and #16 - #21

75. The allegations contained in Paragraphs 1 through 74, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
76. Pursuant to the “*Lessor requirements*” of 40 C.F.R. § 745.113(b)(6), which requirements are recited fully in Paragraph 26, above, each contract to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.
77. Lease Agreements #1 - #13 and #16 - #21 failed to include, as an attachment to or within each such contract, one or more of the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, and/or the dates of signature.
78. Respondent Broadway failed to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21, one or more of the required lessor, agent or lessee, signatures, certifying to the accuracy of their statements in the respective lease agreement, to the best of their knowledge, and/or the dates of signature and Respondents Old Hampton, LLC and MBA-View, LLC similarly failed to include one or more of such required signatures and/or dates as an attachment to, or within, Lease Agreement #5 and Lease Agreements #13 and #19 - #20, respectively.
79. The failure of Respondent Broadway to include as an attachment to, or within, each of Lease Agreements #1 - #4, #6 - #12, #16 - #18 and #21, one or more of the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, and/or the dates of signature, respectively, constitutes fifteen (15) separate violations of 40 C.F.R. § 745.113(b)(6), TSCA Section 409, 15 U.S.C. § 2689, and RLPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

80. The failure of Respondent Old Hampton, LLC to include as an attachment to, or within, Lease Agreement #5, one or more of the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, and/or the dates of signature, respectively, constitutes a violation of 40 C.F.R. § 745.113(b)(6), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
81. The failure of Respondent MBA-View, LLC to include as an attachment to, or within, each of Lease Agreements #13 and #19 - #20, one or more of the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements, to the best of their knowledge, and/or the dates of signature, respectively, constitutes three (3) separate violations of 40 C.F.R. § 745.113(b)(6), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
82. Each of the nineteen (19) violations alleged in the three preceding paragraphs constitutes a separate count for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 92 through 110, as summarized and delineated in the chart set forth in Paragraph 37, above.

V. CERTIFICATION OF COMPLIANCE

83. Each Respondent certifies to EPA, upon investigation, to the best of its knowledge and belief, that it currently is complying with the provisions of TSCA, and the regulations promulgated thereunder at 40 C.F.R. Part 745, Subpart F, that are referenced in this Consent Agreement.

VI. CIVIL PENALTY

84. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondents agree to pay a civil penalty in the amount of **Thirty One Thousand Four Hundred and Eighteen Dollars and Twenty-Five Cents (\$31,418.25)** in accordance with the provisions set forth below, and to perform the Lead-Based Paint Abatement Supplemental Environmental Project (hereinafter "SEP"), as described in Section VII ("Supplemental Environmental Project"). The civil penalty shall become due and payable immediately upon Respondents' receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent. The Respondents further agree that they shall be jointly and severally liable for the payment of such civil penalty amount, and for the performance of the SEP, in accordance with the provisions of this Consent Agreement.

85. 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 Respondents, 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 ERPP") and the *May 1, 1998 EPA Supplemental Environmental Projects Policy* as amended by the November 23, 2004 Thomas V. Skinner Memorandum, entitled *Supplemental Environmental Projects In Administrative Enforcement Matters Involving Section 1018 Lead-Based Paint Cases*. EPA also has considered the *Adjustment of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("2004 Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, penalties for Disclosure Rule violations occurring after January 30, 1997 were increased by 10% to account for inflation, thereby adjusting the statutory maximum penalty to \$11,000. While the statutory maximum penalty for Disclosure Rule violations remains at \$11,000, 40 C.F.R. Part 19 and the 2004 Skinner Memorandum provide that penalties for Disclosure Rule violations occurring after March 15, 2004, are to be increased by an additional 17.23% to account for subsequent inflation, not to exceed the aforementioned \$11,000 limitation. The December 2007 ERPP recognizes and incorporates the above penalty inflation adjustment requirements in its penalty calculation methodology, guidance and appended matrices.
86. All civil monetary penalty payments required pursuant to this Section VI ("Civil Penalty"), shall be made by certified check or cashier's check, or by electronic funds transfer, in the following manner:
- a. All payments by Respondents shall reference Respondents' names and address(es), and the Docket Number of this action, *i.e.*, TSCA-03-2008-0052;
 - 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 – Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Natalie Pearson, 314-418-4087

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

U.S. Environmental Protection Agency – Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

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

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

- g. On-Line Payment Option:

WWW.PAY.GOV

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

- h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)
800-762-4224 (ACI/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finscrvices/make_a_payment_cin.htm

- i. At the same time that payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

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

87. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs 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.
88. In accordance with 40 C.F.R. § 13.11(a), interest on the civil penalty assessed in this CAFO begins to accrue on the date that a copy of this Consent Agreement and the accompanying Final Order are mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of such 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).

89. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
90. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a 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 a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
91. The Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

92. As a condition of this settlement, Respondents shall perform a SEP in the manner and within the time periods described in this Section VII.
93. For the purposes of this Consent Agreement and of the SEP:
- a. "Lead-based paint" shall have the same definition and meaning as set forth at 40 C.F.R. §§ 745.103 and .223;
 - b. "Abatement" refers to any measure or set of measures designed to permanently eliminate lead-based paint hazards and shall have the same meaning and definition as further defined in 40 C.F.R. § 745.223; and
 - c. "Target housing" shall have the same definition and meaning as set forth at 40 C.F.R. § 745.103.

A. SEP Description

94. The Respondents shall provide funds for, and enter into one or more appropriate contracts with independent individuals and/or firms to perform and to complete, within the deadlines specified in Paragraph 106 of this Consent Agreement, the SEP tasks identified in Subsection C of this Section VII, at 534 Hampton Place, Portsmouth, Virginia 23704, a multi-family residential rental property constructed in 1914 (hereinafter referred to as the "Selected Target Housing" or the "Selected Target Housing Property"). As a part of the required SEP, the Respondents, among other things, shall: remove fifty-one (51) window casings and forty-eight (48) windows (including frames, sashes, window heads, jambs,

sills or stools and troughs) in the residential dwelling areas of the Selected Target Housing Property upon which the presence of lead-based paint has been confirmed through preliminary X-ray fluorescence (“XRF”) analysis and to replace each removed window with an energy-efficient window that is free of lead-based paint; remove two (2) front entrance and nine (9) interior doors and associated door casings in the residential dwelling areas of the Selected Target Housing Property, and replace each removed door with one that is free of lead-based paint; and perform specified lead-based paint abatement and post-abatement activities. The SEP requirements and the Respondents’ SEP obligations under this Consent Agreement are set forth in Subsections B and C of this Section VII.

B. General SEP Requirements and Obligations

95. Respondents shall ensure that all lead-based paint abatement tasks to be performed under this CAFO shall be conducted exclusively by individuals and firms certified pursuant to 40 C.F.R. § 745.226 and accredited under applicable State and local laws and/or regulations to perform such work in the state of Virginia (hereinafter, “State”).
96. Respondents shall ensure that all inspections, sampling, assessments, abatement and post-abatement work performed pursuant to this Consent Agreement are performed in conformance with EPA standards as contained in 40 C.F.R. Part 745, Subpart L (“Lead-Based Paint Activities”) and any other applicable State and local laws or regulations.
97. Respondents shall expend a sum of at least Sixty Seven Thousand Nine Hundred Dollars and Seventy-Five Cents (\$67,900.75) to complete the SEP (hereinafter, the “Required SEP Expenditure”) in accordance with the requirements and provisions of this Section VII.
98. If the Respondents do not complete fully the SEP Implementation & Performance requirements and procedures delineated in Paragraphs 105.a. through 105.i. of this Section VII or, in the alternative, if the Respondents fail to incur and spend at least Sixty Seven Thousand Nine Hundred Dollars and Seventy-Five Cents (\$67,900.75) in the performance of the SEP, as determined by EPA pursuant to the applicable provisions of Paragraph 114.a. of this Consent Agreement, on or before the December 31, 2008 deadline set forth in Paragraph 104.b. herein, then the Respondents shall be subject to the assessment of additional civil penalties in accordance with the requirements and provisions of Section XI (“Penalties for Noncompliance and Delay”), below.
99. Pursuant to this Consent Agreement, Respondents shall incur and spend at least the Required SEP Expenditure amount in performance of SEP activities and in fulfillment of all SEP requirements and obligations set forth in Section VII of this Consent Agreement. In addition, the Respondents also shall remain obligated to complete all required Post-Abatement Clearance Procedures and Post-Abatement Work and submit the required

Abatement Report, Post-Abatement Report and Project Completion Report required pursuant to Subsection C (“SEP Performance Requirements and Obligations”) of this Section VII, regardless of whether Respondents have met or exceeded the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure.

100. Respondents shall provide a copy of this CAFO to the current tenant(s), if any, of each Selected Target Housing Property residential dwelling unit at least ten (10) days prior to the commencement of any activity in the Selected Target Housing Property that is required to implement the SEP.
101. Respondents shall ensure that no persons other than those performing the work are present in the Selected Target Housing Property while the work is being performed and that no child under the age of six (6) years, and no pregnant woman, is present in the Selected Target Housing Property at any time during the period in which SEP activities are being performed therein.
102. Respondents, as part of the Required SEP Expenditure, shall pay reasonable expenses associated with the temporary relocation of each of the tenant families occupying the Selected Target Housing Property’s two (2) residential dwelling units in the anticipated event that such tenants must evacuate the Selected Target Housing for a period of twenty-four (24) or more hours to allow Respondents or their contractors to perform any SEP activities. Such reasonable relocation expenses include, but shall not exceed, \$1,000.00 per Selected Target Housing dwelling unit tenant family (i.e., for a total expense that shall not exceed \$2,000.00) toward the cost of providing temporary alternative residential housing that is free of “lead-based paint hazards”, as that term is defined in 40 C.F.R. Section 745.223, to each of the tenant families occupying the Selected Target Housing Property’s two (2) residential dwelling units. Such reasonable relocation expenses also shall include, but shall not exceed, \$300.00 per Selected Target Housing dwelling unit tenant family (i.e., for a total expense that shall not exceed \$600.00) toward the cost of relocating (i.e., physically moving) each tenant family and its necessary possessions to temporary alternative housing.

C. SEP Performance Requirements and Obligations

103. **Contracts** - Respondents shall solicit bids for, provide funds for, and enter into one or more appropriate contracts with independent individuals and firms to perform and to complete within the deadlines specified in Paragraph 106 of this Consent Agreement, the SEP tasks identified in Subsection C of this Section VII.
104. **SEP Milestone Deadlines and Completion Date** - Respondents, in accordance with each of the requirements set forth in this Section VII, shall:

- a. complete within the deadlines specified in Paragraph 106 of this Consent Agreement, the SEP activities identified in Subsection C of this Section VII; and
- b. complete fully the SEP and each of the requirements of this Consent Agreement on or before December 31, 2008 (the "SEP Completion Deadline").

105. ***SEP Implementation & Performance*** - The Respondents shall follow the requirements and procedures set forth below (collectively, the "SEP Performance Requirements") in the performance of this SEP at the Selected Target Housing Property and with respect to the performance of all preliminary inspections, analyses and assessments, all Window and Door Replacement Tasks and all associated Post-Abatement Clearance Procedures required as a part of this SEP:

- a. ***Prior Approvals and Authorizations*** - Before initiating any lead-based paint activity described herein at the Selected Target Housing Property, Respondents shall obtain, at their own expense, all permits, licenses, and other forms of approval or authorization necessary to conduct this SEP from all relevant federal, state, and local agencies, departments and commissions; and
- b. ***Inspections, Analyses and Initial Assessments*** - Respondents previously entered into a contract with a "certified firm," as this term is defined in 40 C.F.R. § 745.223, to:
 - i. Perform a thorough visual "inspection", XRF analysis and a "risk assessment" of the windows (including casings, sashes, window heads, jambs, sills or stools and troughs) and doors (including casings) within the Selected Target Housing Property and provide to the Respondents a written "Initial Assessment Report" containing the information specified in Paragraph 105.c. of this Consent Agreement; and
 - ii. Identify and report, in accordance with Paragraph 105.c. of this Consent Agreement, the existence, nature, severity, and location of "lead-based paint", "lead-based paint hazards" and any condition that may cause human exposure to lead from "lead-based paint" or lead-contaminated dust that is deteriorated or present in or on an "accessible surface," "friction surface," or "impact surface" of any interior window, as these terms are defined in 40 C.F.R. § 745.223.
- c. ***Respondent's Initial Assessment Report*** - An Initial Assessment Report for the Selected Target Housing, dated December 17, 2007, was prepared and submitted to EPA by Respondents in December, 2007. Such Initial Assessment Report documents and explains in writing the results of the visual inspection, XRF analysis and risk assessment performed on 51 windows (including casings, sashes,

window heads, jambs, sills or stools and troughs) and 22 doors (including casings) present in the residential dwelling areas of the Selected Target Housing Property, including the fifty-one (51) window casings, forty-eight (48) windows (including frames, sashes, window heads, jambs, sills or stools and troughs), two (2) front entrance doors (one to the 1st and the other to the 2nd floor residential dwelling unit of the Selected Target Housing Property) and nine (9) interior doors and associated door casings (in the 1st floor residential dwelling unit of the Selected Target Housing Property) which are the subject of this SEP.

- d. ***Window & Door Replacement Tasks*** - The Respondents shall:
- i. remove fifty-one (51) window casings and forty-eight (48) windows (including frames, sashes, window heads, jambs, sills or stools and troughs) in the 1st and 2nd floor residential dwelling units of the Selected Target Housing Property upon which the presence of “lead-based paint”, as this term is defined in 40 C.F.R. § 745.223, has been confirmed through preliminary X-ray fluorescence (“XRF”) analysis, as identified in the February 21, 2008 preliminary contract agreement prepared by Superior Replacement Windows, LLC for Mr. Bernie Kirsch, Owner/Manager;
 - ii. remove two (2) front entrance doors (one to the 1st and the other to the 2nd floor residential dwelling unit of the Selected Target Housing Property) and nine (9) interior doors and associated door casings in the 1st floor residential dwelling unit of the Selected Target Housing Property, as identified in the February 21, 2008 preliminary contract agreement prepared by Superior Replacement Windows, LLC for Mr. Bernie Kirsch, Owner/Manager;
 - iii. replace each removed window casing with a window casing that is free of lead-based paint;
 - iv. replace each removed window with an energy-efficient window (including frames, sashes, window heads, jambs, sills or stools and troughs) that is free of lead-based paint;
 - v. replace each removed door casing with a door casing that is free of lead-based paint;
 - vi. replace each removed door with a door that is free of lead-based paint;
 - vii. paint all replaced window and door components, as identified in the February 22, 2008 preliminary contract agreement prepared by Hudman Construction for Olde Hampton, LLC., with paint that is not lead-based;

and

- viii. perform those required lead-based paint abatement and post-abatement activities described below in this Section VII.

- e. ***Window & Door Replacement Task Completion Notification*** - Respondents shall prepare a brief written notification to EPA upon completion of the Window and Door Replacement Tasks at the Selected Target Housing Property and shall submit the same to EPA, in accordance with the Requirements of Sections VIII (“Required Reports, Notices and Submissions”), XII (“Certification”) and XIII (“Submission Requirements”) of this Consent Agreement.

- f. ***Post-Abatement Clearance Procedures*** - Before or upon completion of the Window Replacement & Door Tasks at the Selected Target Housing Property, the Respondents shall enter into a contract with a “certified inspector,” as this term is defined in 40 C.F.R. § 745.223, who is unrelated to, and completely independent from, each individual and/or firm who has performed any of the Paragraph 105.d.i. through 105.d.vii. Window Replacement & Door Tasks. Pursuant to such contract, the Respondents shall ensure that the certified inspector implements the Post-Abatement Clearance Procedures set forth at 40 C.F.R. §§ 745.227(e)(8), (f) and (g) within 48 hours after the Window & Door Replacement Tasks are completed and certifies in writing that:
 - i. All Window & Door Replacement Tasks have been completed in the Selected Target Housing Property as required by this CAFO; and
 - ii. All sampling and clean-up of lead-contaminated dust and debris generated during the performance of the Window & Door Replacement Tasks properly have been completed and that no lead-contaminated dust or debris remains within the Selected Target Housing Property.

- g. ***Abatement and Post-Abatement Report Requirements*** - Before or upon completion of the Window & Door Replacement Tasks at the Selected Target Housing Property, Respondents also shall enter into a contract with a “certified project designer” or “certified supervisor” as defined in 40 C.F.R. § 745.223, who is unrelated to, and completely independent from, each individual and/or firm who has performed any of the Paragraph 105.d.i. through 105.d.vii. Window & Door Replacement Tasks to complete an “Abatement Report” (and, if necessary, a “Post-Abatement Report” as referenced in Paragraph 105.h. of this Consent Agreement), in accordance with the requirements of 40 C.F.R. § 745.227(e)(10). The Abatement Report and Post-Abatement Report (if necessary) shall document such certified project designer’s or certified supervisor’s findings with respect to the implementation of the Window & Door Replacement Tasks at the Selected Target Housing Property and shall include copies of the certified project

designer's or certified inspector's written Post-Abatement Clearance Procedure certifications pertaining to the Selected Target Housing Property.

- h. **Post-Abatement Work** - If the Abatement Report for the Selected Target Housing Property indicates that the frame (including casings, sashes, window heads, jambs, sills or stools and troughs) of any window or the casing of any door that the Respondents have replaced as part of the Window & Door Replacement Tasks for the Selected Target Housing Property still contains lead-based paint, Respondents shall be responsible for having a "certified project designer" or "certified supervisor" undertake such "Post-Abatement Work" as is necessary to eliminate the lead-based paint in conformance with the requirements of 40 C.F.R. Part 745, Subpart L, including any applicable post-abatement clearance procedures, and to prepare a "Post-Abatement Report" in accordance with the requirements set forth in Paragraphs 105.g. and 105.i. of this Consent Agreement.
- i. **Respondents' Abatement and Post-Abatement Obligations** - Respondents shall ensure that all Post-Abatement Clearance Procedures required pursuant to Paragraph 105.f of this Consent Agreement are performed timely and that all written certifications, Abatement Reports and Post-Abatement Reports (if necessary) required pursuant to Paragraphs 105.f., 105.g. and 105.h. of this Consent Agreement, are prepared properly and timely. Respondents shall submit each Abatement Report and Post-Abatement Report to EPA in accordance with the Requirements of Sections VIII ("Required Reports, Notices and Submissions"), XII ("Certification") and XIII ("Submission Requirements") of this Consent Agreement.

106. **SEP Work Schedule** - The Respondents shall complete each of the applicable SEP Performance Requirements set forth in Paragraphs 105.a. through 105.i. of this Consent Agreement, at the Selected Target Housing Property, on or before the deadlines set forth in the following SEP Work Schedule:

<u>SEP Work Schedule</u>	<u>Deadline</u>
Paragraph 105.a. Requirements	April 30, 2008
Paragraph 105.d. through 105.i. Requirements	September 30, 2008

107. **Maintenance of Required SEP Expenditure Invoices, Receipts and Payment Records** - Respondents shall maintain copies of all invoices, bills, payment receipts, cancelled checks and other cost and payment information, documentation and records related to the costs incurred and the payments made by the Respondents in the performance of all "SEP Performance Requirements and Obligations" set forth in this Section VII, including costs incurred and paid for all Initial Assessments, Initial Assessment Reports, Window & Door Replacement Tasks, Post-Abatement Clearance Procedures, Abatement Reports, Post-Abatement Work, Post-Abatement Reports and any additional costs reasonably

incurred by Respondents in the performance of the SEP at the Selected Target Housing Property and in relocating (i.e., moving) tenants and their necessary possessions to alternative housing, which costs are eligible for, and which the Respondents may wish to have applied toward, the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure.

108. **Required SEP Expenditure Eligible Costs** - Costs incurred and paid by the Respondents in the performance of the activities described in Subsection VII.C. of this Consent Agreement shall be applied toward the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure provided that the requirements and conditions set forth in Paragraphs 112.b. and 114.a. of this Consent Agreement are met.

VIII. REQUIRED REPORTS, NOTICES AND SUBMISSIONS

109. During the period beginning upon the effective date of this CAFO and continuing through the December 31, 2008 SEP Completion Deadline (i.e., the "Reporting Period") the Respondents shall submit to EPA for EPA review, in accordance with the requirements and provisions of this Section VIII and each of the additional requirements and provisions of Sections XII ("Certification") and XIII ("Submission Requirements") of this Consent Agreement, each of the reports, notices and other submissions herein specified.

A. Reports and Notices to be Submitted

110. **Quarterly Reports** - During the Reporting Period, the Respondents shall submit to EPA, on or before the last day of each calendar quarter (i.e., June 30th, September 30th and December 31st), a "Quarterly Report" for the LBP Abatement Project. Each Quarterly Report shall contain the following:
- a. Copies of each written permit, license, approval or authorization obtained by the Respondents during the most recent calendar quarter (the "Quarterly Reporting Period") from all relevant federal, state and/or local agencies, departments or commissions as a necessary prerequisite to conducting SEP requirements at the Selected Target Housing Property.
 - b. Copies of each contract entered into by the Respondents during the Quarterly Reporting Period for the performance of SEP activities at the Selected Target Housing Property.
 - c. Copies of each Selected Target Housing Property Initial Assessment Report, Abatement Report and Post-Abatement Report prepared during the Quarterly Reporting Period.

- d. A clear and concise description of those SEP Performance Requirements that were performed at the Selected Target Housing Property during the Quarterly Reporting Period.
 - e. A brief accounting and summarization of those costs incurred by the Respondents during the most recent Quarterly Reporting Period in the performance of the "SEP Performance Requirements and Obligations" specified in Subsection VII.C. of this Consent Agreement which the Respondents consider to be eligible for application toward the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure.
111. **Window & Door Replacement Task Completion Notification** - Within five (5) calendar days after completion of all Window & Door Replacement Tasks required pursuant to Section VII of this Consent Agreement at the Selected Target Housing Property, the Respondents shall submit to EPA a brief written summary of the number of windows abated and replaced and their location(s) within the Selected Target Housing Property.
112. **Project Completion Report** - Upon Respondent's Completion of the SEP, and no later than December 31, 2008, Respondents shall submit to EPA a "Project Completion Report" for the SEP. The Project Completion Report shall contain a clear and concise description of the SEP as implemented, including the following:
- a. A description of the activities undertaken at the Selected Target Housing Property, including:
 - i. A brief summary of the information set forth in the Initial Assessment Report;
 - ii. A brief description of the Window Replacement Tasks performed, including the number and location of windows abated and replaced in the Selected Target Housing Property; and
 - iii. A description of any problems encountered in implementing the Window Replacement Tasks, Post-Abatement Clearance Procedures, any Post-Abatement Work and the solutions employed in overcoming any such problems.
 - b. A full and complete accounting and summarization which itemizes the costs of the SEP which the Respondents seek to have applied toward the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure in accordance with the provisions of Paragraph 108 of this Consent Agreement and which includes copies of all written invoices, bills,

payment receipts, cancelled checks and other records documenting the performance of, and payment for, such work by the Respondents.

B. EPA Review of Reports, Notices and Submissions

113. **Review of Quarterly Reports and Completion Notification** - EPA will review each of the Quarterly Reports and the Window & Door Replacement Task Completion Notification submitted by the Respondents. EPA will notify the Respondents, in a written Notice of Deficiency, of any deficiency(ies) identified in any such Quarterly Report or Window Replacement Task Completion Notification.
114. **Project Completion Review** - EPA will review the Respondents' Project Completion Report. Following such review, EPA will do one of the following:
- a. **EPA Acceptance** - If EPA determines that the SEP was conducted and completed in accordance with the requirements and provisions of this CAFO and in compliance with all applicable federal, state and local laws and regulations, and that the Respondents have demonstrated to EPA's satisfaction that they have incurred and spent those funds which the Respondents seek to have applied toward the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure, EPA will issue a written notification to the Respondents accepting the Project Completion Report and approving the SEP Expenditures documented therein ("Approved SEP Expenditures").
 - b. **EPA Rejection** - If EPA determines that the SEP was not conducted and completed in accordance with the requirements and provisions of this CAFO and in compliance with all applicable federal, state and local laws and regulations, that the Project Completion Report does not contain the information described in Paragraph 112 of this Consent Agreement or that the Respondents have not demonstrated to EPA's satisfaction that they have incurred and spent those funds which they seek to have applied toward the Sixty Seven Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure, EPA will issue a written Notification of Disapproval (the "NOD") to the Respondents rejecting the Project Completion Report, providing EPA's reasons therefor, identifying the deficiencies in the Project Completion Report and/or in the Respondents' performance of the SEP and any costs that EPA has determined are not eligible as Required SEP Expenditures, and granting the Respondents a reasonable time from receipt of such notice within which to correct any such deficiencies which are amenable to correction and obtain SEP Expenditure approval pursuant to Paragraph 114.a, above.

115. **Respondents' Opportunity to Submit Objection Notification** - Respondents may object in writing to an NOD by submitting a written "Objection Notification" to EPA within seven (7) calendar days of Respondents' receipt of such NOD. The Objection Notification must state the basis for the Respondents' objection to the NOD, clearly and concisely identify the issue(s) forming the basis of any such objection and provide a supporting rationale for any alternate position advocated by the Respondents.
- a. **No Objection by Respondents** - In the event Respondents elect not to object to an NOD by submitting a written "Objection Notification" to EPA in accordance with the requirements herein but thereafter fail to correct the deficiencies identified in the NOD in a timely manner, the Respondents shall be subject to additional penalties in accordance with Paragraph 123.a of this Consent Agreement.
- b. **Objection Raised by Respondents** - In the event that the Respondents timely submit a written Objection Notification to EPA in accordance with the requirements herein, EPA and the Respondents shall have thirty (30) calendar days from EPA's receipt of the Objection Notification to reach agreement on the matter(s) in dispute (the "Dispute Resolution Period"). If written agreement cannot be reached on any such matter within the Dispute Resolution Period, EPA shall provide a written statement of its decision ("SOD") to the Respondents, which decision shall be final and binding upon the Respondents. Respondents thereafter shall correct those deficiencies identified in any SOD within such reasonable time period therein identified by EPA or timely comply with the requirements of any written agreement between the Parties resolving the matter(s) in dispute, or the Respondents shall be subject to additional penalties in accordance with Paragraph 123.a. of this Consent Agreement.

IX. SATISFACTION OF SETTLEMENT CONDITIONS

116. EPA shall determine the Respondents' compliance with the requirements and provisions set forth in this Consent Agreement.
117. A determination of compliance with the SEP requirements and provisions set forth herein will be based upon, among other things, records, reports, and other submissions made by the Respondents to EPA pursuant to the requirements and provisions of Section VIII ("Required Reports, Notices and Submissions") of this Consent Agreement and any inspections that EPA may perform.
118. If EPA determines that the Respondents have complied fully with the SEP requirements and provisions set forth herein and the additional requirements and provisions of this CAFO, then EPA, through the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, shall issue a "Letter of Remittance" which shall state that the Respondents have performed the SEP in accordance with this CAFO and have paid all

civil penalty amounts due pursuant to the terms of this CAFO.

X. FORCE MAJEURE

119. If any event occurs which causes or may cause delays in the completion of any SEP requirements within the deadlines set forth in Paragraph 106 of this Consent Agreement, Respondents shall notify EPA in writing within seven (7) calendar days of the date on which Respondents knew or should have known of such event, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondents shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by the Respondents to comply with the notice requirements of this paragraph shall render application of the “force majeure” terms and provisions of this Section X (“Force Majeure”) void and of no effect as to the particular event involved and shall constitute a waiver of the Respondents’ right to request an extension of time to fulfill any obligation under this CAFO affected by such event. Increased costs or expenses associated with the implementation of actions required by this CAFO shall not, in any circumstance or event, be a basis for the assertion or finding of a “force majeure” event pursuant to this Section X of the Consent Agreement or for the extension of any deadline herein.
120. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CAFO has been or will be caused by circumstances entirely beyond the control of the Respondents which could not or cannot be overcome by due diligence (*i.e.*, a “force majeure”), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate in writing to such extension of time.
121. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by a force majeure EPA, in its sole discretion, will notify the Respondents in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondents’ obligations under this CAFO and the Respondents may be subject to the payment of additional penalties for such delays as described in Section XI (“Penalties for Noncompliance and Delay”), below.
122. The burden of proving that any delay is caused by a “force majeure” event shall rest with Respondents.

XI. PENALTIES FOR NONCOMPLIANCE AND DELAY

123. ***Additional Penalties*** - In the event that the Respondents fail to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described herein, or if the Approved SEP Expenditures for the SEP do not equal the Sixty Seven

Thousand Nine Hundred Dollar and Seventy-Five Cent (\$67,900.75) Required SEP Expenditure amount, the Respondents shall be liable for additional penalties, as provided below:

- a. ***Penalty for Failure to Timely and Satisfactorily Complete SEP*** - Except as provided in Paragraphs 123.b. of this Consent Agreement, if the SEP has not been timely and satisfactorily completed pursuant to the requirements and provisions of Section VII (“Supplemental Environmental Project”), Respondents shall pay an additional civil penalty up to, but not to exceed, that amount which equals Eighty-Six percent (86%) of the difference between the Approved SEP Expenditures and the Sixty Seven Thousand Nine Hundred Dollars and Seventy-Five Cents (\$67,900.75) Required SEP Expenditure (i.e., the “SEP Penalty Mitigation Percentage”), according to the following mathematical formula:

$$\begin{aligned} & \$ 67,900.75 - [\text{minus}] \text{ the Approved SEP Expenditures } \times [\text{times}] 0.86 \\ & = [\text{equals}] \text{ Additional Penalty.} \end{aligned}$$

- b. ***Exception to Penalty for Failure to Satisfactorily Complete SEP*** - If the SEP has not been satisfactorily completed, but the Respondents have:
- i. Made timely and good faith efforts to complete the SEP;
 - ii. Fully complied with its obligations under Paragraph 99 of this Consent Agreement; and
 - iii. Certified, with supporting documentation, and demonstrated to EPA’s satisfaction pursuant to Paragraph 114.a. of this Consent Agreement, that ninety-five percent (95 %) of the Required SEP Expenditure amount was expended on the SEP, then Respondents shall not pay any additional penalty for failure to complete satisfactorily the SEP.
- c. ***Satisfactory Completion of SEP without Required SEP Expenditure*** - If the SEP has been satisfactorily completed, but:
- i. the Respondents have spent less than Eighty-Six percent (86%) of the Required SEP Expenditure amount, Respondents shall pay as an additional penalty the difference between the amount of the proposed penalty that was mitigated on account of Respondent’s performance of the SEP (i.e., \$58,581.75) and the amount of penalty mitigation credit attributable to the actual Approved SEP Expenditures incurred by Respondents to complete the SEP; or
 - ii. the Respondents have spent at least Eighty-Six percent (86%) of the Required SEP Expenditure amount, Respondents shall not be liable for any additional penalty.

- d. **Penalty for Failure to Complete SEP Activities Timely and/or Properly** - If the Respondents fail to complete any SEP activity in accordance with the applicable requirements of this Consent Agreement, on or before an applicable deadline set forth in Paragraph 106 of this Consent Agreement, Respondents shall pay an additional penalty of one-hundred dollars (\$100.00) for each day that completion of such activity is delayed beyond the established deadline.
- e. **Penalty for Failure to Submit Quarterly Report or Window & Door Replacement Task Completion Notification Timely and/or Properly** - If the Respondents fail to submit any Quarterly Report or the Window & Door Replacement Task Completion Notification to EPA, in accordance with each of the applicable requirements of Paragraph 110 or 111 of this Consent Agreement, respectively, Respondents shall pay an additional penalty of one-hundred dollars (\$100.00) for each day that any such Quarterly Report or Window & Door Replacement Task Completion Notification is late and/or deficient.
- f. **Penalty for Failure to Submit Project Completion Report Timely and/or Properly** - If Respondents fail to submit the required Project Completion Report to EPA, in accordance with the deadline and each of the requirements of Paragraph 112 of this Consent Agreement, Respondent shall pay an additional penalty of two-hundred and fifty dollars (\$250.00) for each day that the Project Completion Report is late and/or deficient.
- g. **Penalty for Failure to Correct Deficiency** - If the Respondents fail to correct any deficiency identified by EPA in a written Notice of Deficiency issued pursuant to Paragraph 113 of this Consent Agreement within such reasonable time period as therein identified by EPA, Respondents thereafter shall pay an additional penalty of two-hundred dollars (\$200.00) for each day of continued deficiency.
- h. **Penalty for Failure to Correct Deficiency in NOD or SOD or to Comply with Requirements of Written Agreement Resolving Dispute** - If the Respondents fail to correct timely any deficiency identified by EPA in a written NOD, issued pursuant to Paragraph 114.b of this Consent Agreement, that is not the subject of a pending Dispute Resolution pursuant to a written Objection Notification timely and properly submitted by Respondents in accordance with the provisions of Paragraph 115 of this Consent Agreement, and if the Respondents fail to correct timely any deficiency identified by EPA in a written SOD, issued pursuant to Paragraph 115.b of this Consent Agreement, or to comply with the requirements of any written agreement between the Parties resolving any matter(s) in dispute, Respondents thereafter shall pay an additional penalty of two-hundred dollars (\$200.00) for each day of deficiency or noncompliance.
- i. **Cap on Total Amount of Respondents' Approved SEP Expenditures and Any Additional Penalties** - Notwithstanding the foregoing, the Approved SEP Expenditures plus any additional penalties incurred and paid by the Respondents

under this Section XI (“Penalties for Noncompliance and Delay”) shall not exceed a total amount of Sixty Seven Thousand Nine Hundred Dollars and Seventy-Five Cents (\$67,900.75), except that, in any event, the Respondents shall remain obligated to complete all required Post-Abatement Clearance Procedures and Post-Abatement Work as is necessary to fulfill its corresponding obligations under Paragraph 99 of this Consent Agreement.

- j. ***Reasonable Exercise of EPA Discretion*** - In exercising its discretion or making determinations under this CAFO, EPA will be reasonable, considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CAFO, including the determination as to whether the SEP has been completed satisfactorily, shall be at the sole discretion of EPA. Notwithstanding any other provision of this CAFO, no action or decision by EPA pursuant to this CAFO shall constitute final agency action giving rise to any right to judicial review prior to EPA’s initiation of judicial action to compel compliance with this CAFO. Additional penalties for Noncompliance and Delay, as set forth in this Section XI (“Penalties for Noncompliance and Delay”), shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity.
- k. ***Additional Penalties Due and Payable Upon Receipt of Written Demand*** - Additional penalties for Noncompliance and Delay, as set forth in this Section XI (“Penalties for Noncompliance and Delay”), shall become due and payable immediately upon the Respondents’ receipt of a written demand by EPA for such penalties. The method of payment and the assessment of interest, administrative costs and late payment penalties in connection with the late payment of such additional penalties shall be in accordance with the requirements for the payment of a civil penalty as specified in Section VI (“Civil Penalty”) of this Consent Agreement.

XII. CERTIFICATION

124. Any notice, report, certification, data presentation, or other document submitted by the Respondents pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning the Respondents’ compliance or noncompliance with any requirement of this CAFO shall be signed and certified by one or more persons who have the authority to represent and to legally bind each of the Respondents. Such certification shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted to EPA under this certification. I believe that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information to EPA including the possibility of fine and/or imprisonment for knowing violations.

Signature(s): _____
Title(s): _____
Name(s): _____

XIII. SUBMISSION REQUIREMENTS

125. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CAFO shall be sent by: certified mail, return receipt requested; overnight delivery (*by Federal Express or other non-U.S. Postal Service Express mail*) or by hand delivery, as follows:

If to EPA:

Kyle Chelius
Lead Compliance Officer (3WC33)
United States Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

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

If to the Respondents:

Frank B. Kirsch, III
208 87th Street
Virginia Beach, VA 23451

and

Marina Liacouras Phillips, Esquire
Kaufman & Canoles
150 West Main Street
Suite 2100
Norfolk, Virginia 23510

XIV. OTHER APPLICABLE LAWS

126. Nothing in this CAFO shall relieve the Respondents of any duties otherwise imposed upon any of them by applicable federal, state or local laws and/or regulations.

XV. NO RELEASES

127. Nothing in this CAFO shall constitute or be construed as a release of any of the Respondents from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CAFO for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazards at or in any "target housing" or in the Selected Target Housing Property which is the subject of this CAFO.

XVI. LIABILITY OF EPA

128. EPA shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondents or of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the SEP, nor shall EPA be held out as a party to any contract entered into by the Respondents in carrying out the terms of this CAFO.

XVII. INDEMNIFICATION AND HOLD HARMLESS

129. Respondents agree to indemnify and hold harmless EPA and its agents, employees, and authorized representatives from any and all causes of action arising from any acts or omissions of the Respondents or of any of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants, in carrying out the terms of this CAFO.

XVIII. NO REIMBURSEMENTS

130. Respondents certify that they have not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses that they incur to fulfill the terms of this CAFO.
131. For Federal Income Tax purposes, the Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

XIX. NON-TRANSFERABILITY

132. Respondents shall have sole responsibility for the legal obligations created by this CAFO to finance and enter into appropriate contracts to perform the SEP described herein. Any act by the Respondents to transfer such responsibility shall constitute abandonment and cause the Respondents to be liable for additional penalties as specified in Paragraph 123.a. of this Consent Agreement.

XX. DISTRIBUTION OF CAFO

133. Respondents shall provide a copy of the CAFO to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by the Respondents to conduct any portion of the SEP required to be performed pursuant to this CAFO.

XXI. PUBLIC STATEMENTS BY RESPONDENTS

134. Any public statement, oral or written, in print, film, or other media, made by the Respondents in reference to the above SEP shall include language indicating that this project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency for Respondents' alleged violations of TSCA, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and their implementing regulations.

XXII. ACCESS TO INFORMATION

135. In addition to the information and documents otherwise required by this CAFO, Respondents shall provide to EPA, upon written request, any and all information and/or documents in their possession, custody or control which relate to the SEP described herein including, but not limited to, operational logs, copies of waste manifests, the identity of the transporter(s) of wastes generated by the SEP, the identity of any contractors, subcontractors and supervisory personnel used, and information and documents concerning the Respondents' compliance with state and local requirements. Nothing in this Consent Agreement shall be interpreted as limiting the inspection and information-gathering authority of EPA under any law or regulation.
136. EPA and its employees and authorized representatives shall have the authority to enter and freely move about the location where any SEP is being performed pursuant to this CAFO, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CAFO; reviewing the progress of the Respondents in carrying out the terms of this CAFO; conducting such sampling, monitoring, or other tests as EPA deems necessary to ensure compliance with the CAFO; and verifying the data and information submitted to EPA by the Respondents. Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings,

including all sampling and monitoring data, in any way pertaining to the CAFO. EPA's authorized representatives may use a camera, recording, or other equipment to record its observations during such access.

XXIII. CLAIM OF CONFIDENTIALITY

- 137. Respondents may make a claim of business confidentiality for any information provided to EPA pursuant to this CAFO in the manner described in 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. Section 2.204(c)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to the Respondents.

XXIV. RESERVATION OF RIGHTS

- 138. EPA reserves the right to commence action against any person or persons, including the Respondents, 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 CAFO is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law. In addition, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which it has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Nothing in this CAFO shall constitute or be construed as a release of the Respondents from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CAFO for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazards at or in any target housing which is the subject of this CAFO.

XXV. FULL AND FINAL SATISFACTION

- 139. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the Consent Agreement.

XXVI. EFFECTIVE DATE

140. The effective date of this Consent Agreement and of the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

XXVII. ENTIRE AGREEMENT

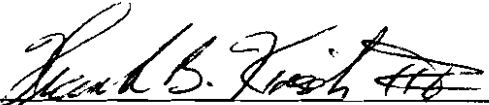
141. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.

XXVIII. EXECUTION

142. The persons signing this Consent Agreement on behalf of the Respondents acknowledge and certify by their respective signatures that they are: (a) legally binding themselves, as individuals, to the terms and conditions of this Consent Agreement and the accompanying Final Order; and (b) fully authorized to enter into this Consent Agreement and to legally bind Broadway Associates, Olde Hampton, LLC and MBA-View, LLC, respectively, to the terms and conditions thereof.

For Respondents Broadway Associates, Olde Hampton, LLC and MBA-View, LLC:

Date: 3/17/2008


By: 
Frank B. Kirsch, III

In the Matter of:
Broadway Associates, et al.

Consent Agreement
Docket No. TSCA-03-2008-0052

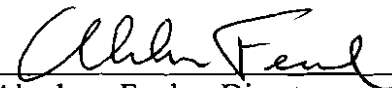
For Complainant:

Date: 3/18/2008

By: 
A.J. D'Angelo
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 3/20/08

By: 
Abraham Ferdas, Director
Waste and Chemicals Management Division

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

MAR 25 11 21 52
U.S. EPA REGION III

In the Matter of:

**Broadway Associates,
(a/k/a Broadway Avenue Associates),
Frank B. Kirsch, III and Michael R. Kirsch,
General Partners,
Olde Hampton, LLC, and
MBA-View, LLC,**

Respondents.

**534 Hampton Place,
Portsmouth, Virginia 23704**

and

**263 A View Avenue,
Norfolk, Virginia 23503,**

Target Housing.

U.S. EPA Docket No.

TSCA-03-2008-0052

**Proceeding under Sections 409
and 16(a) of the Toxic Substances
Control Act, 15 U.S.C. §§ 2689
and 2615(a)**

FINAL ORDER

Complainant, the Director of the Waste and Chemicals Management Division, United States Environmental Protection Agency (“EPA”), Region III, and Broadway Associates, a Virginia general partnership, Olde Hampton, LLC and MBA-View, LLC (collectively, “Respondents”) 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*”), published at 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 set forth fully herein.

WHEREFORE, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Lead Paint Disclosure Act”), 42 U.S.C. §§ 4851 *et seq.*, and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of the Lead Paint Disclosure Act, and upon representations in the Consent Agreement that the agreed Thirty One Thousand Four Hundred and Eighteen Dollar and Twenty-Five Cent (\$31,418.25) civil penalty payment was based upon a consideration of the factors set forth in Section 16(a)(2)(B) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondents pay a civil penalty of Thirty One Thousand Four Hundred and Eighteen Dollars and Twenty-Five Cents (\$31,418.25) in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional terms and provisions thereof, in settlement of the civil claims contained therein.

The effective date of this Final Order and of the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

Date: 3/25/08

By: Renée Sarajian
Renée Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

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

In the Matter of:

**Broadway Associates,
(a/k/a Broadway Avenue Associates),
Frank B. Kirsch, III and Michael R. Kirsch,
General Partners,
Olde Hampton, LLC, and
MBA-View, LLC,**

Respondents.

**534 Hampton Place,
Portsmouth, Virginia 23704**

and

**263 A View Avenue,
Norfolk, Virginia 23503,**

Target Housing.

**U.S. EPA Docket No.
TSCA-03-2008-0052**

**Proceeding under Sections 409
and 16(a) of the Toxic Substances
Control Act, 15 U.S.C. §§ 2689
and 2615(a)**


CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 the original and one copy of the foregoing Consent Agreement and the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid, to the following persons at the following addresses:

**Frank B. Kirsch, III
208 87th Street
Virginia Beach, VA 23451
(Article No. 7002 0510 0003 9095 4241)**

**Marina Liacouras Phillips, Esquire
Kaufman & Canoles
150 West Main Street
Suite 2100
Norfolk, VA 23510
(Article No. 7002 0510 0003 9095 4258)**

3/25/2008
Date


A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
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