



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Reply Refer To Mail Code: 3RC50

VIA UPS OVERNIGHT MAIL

Mr. Bryen McHenry, Office Manager
Ms. Paula McHenry
Owner/Broker
Remax Properties of the Valley
2510 Murdoch Avenue
Parkersburg, WV 26104

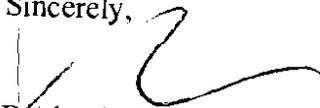
February 14, 2011

Re: Certified Copy of Consent Agreement and Final Order
EPA Docket No. TSCA-03-2011-0039

Dear Mssrs. McHenry:

I am enclosing a certified copy of the settlement agreement (CAFO) which was filed with the Regional Hearing Clerk today, February 14, 2011. Please note that the CAFO is effective today, in accordance with paragraph 88 of the CAFO and the Final Order. The payment instructions are set forth in section V (p.14) of the CAFO. Feel free to call me if you have any questions regarding this matter. I can be reached at (215) 814-2618

Sincerely,


Benjamin M. Cohan
Senior Assistant Regional Counsel

Enclosures

cc: Kyle Chelius (3LC61)(w/ Enclosure)

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

In the Matter of:

Re Max Properties of the Valley, Inc.

U.S. EPA Docket No.
TSCA-03-2011-0039

Respondent.

1104 17th Street
Parkersburg, WV 26101;

109 Oakwood Place,
Parkersburg, WV 26101;

2501 27th Street
Parkersburg, WV 26101

102 41st St
Vienna, WV 26105

2502 27th Street
Parkersburg, WV 26101

1602 24th Street
Parkersburg, WV 26101

2003 Park Ave.
Parkersburg, WV 26101

2810 17th Ave.
Vienna, WV 26105

Target Housing.

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

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

- I. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant") and ReMax Properties of the Valley, Inc. ("Respondent") 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 Respondent’s 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*, Complainant 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 (“EPA”) 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, Respondent admits 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, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and the attached Final Order.

7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

9. Respondent consents to the issuance of this CAFO and agrees 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, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "target housing" means "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling."
13. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term "residential dwelling" means either a single family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
14. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term "residential real property" means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
15. Each of the properties located at the above captioned addresses, consist of and, at all times relevant to the violations alleged herein, consisted of residential real property on which there is situated a residential dwelling in the form of a detached single family home.
16. Each of the residential dwellings situated on the residential real property located at the above captioned addresses, is housing constructed prior to 1978.
17. Each of the residential dwellings situated on the residential real property located at the above captioned addresses, 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 the above captioned addresses, 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 "purchaser" means any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit 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 certification and acknowledgment of disclosure requirements applicable to sellers are set forth at 40 C.F.R. § 745.113 and provide, in pertinent part, as follows:

(a) *seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language :

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning 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 seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have [SIC] been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this [40 C.F.R.] section [745.113] and the lead hazard information pamphlet required under 15 U.S.C. [§ 2696].

(5) A statement by the purchaser that he/she has either: (i) received the opportunity to conduct the risk assessment or inspection required by § 745.110(a);

or (ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller'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.

(7) The signatures of the sellers, agents and purchasers certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

* * *

26. 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.

27. 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.

28. At all times relevant to the violations alleged herein, Respondent was an “agent” of each respective “sellers” and/or “purchasers” of the “target housing”, as those terms are defined at 40 C.F.R. § 745.103, located at the above captioned addresses, and with respect to each of the eight (8) respective sales transactions, identified (by Count Numbers, Target Housing Address, Sales Date and Sales Transaction Number) below:

<u>Count Numbers</u>	<u>Target Housing Address</u>	<u>Sales Date</u>	<u>Sales Transaction No.</u>
15,22	1104 17 th Street, Parkersburg, WV	5/8/2006	#1
1,5,10,16,23,26,31	109 Oakwood Place, Parkersburg WV	9/28/2006	#2
2,6,11,17,27,32	2501 27 th Street, Parkersburg WV	7/11/06	#3
3,7,12,18,24,28,33	102 41 Street, Vienna, WV	9/28/2007	#4
4,8,13,19,29,34	2502 27 th Street, Parkersburg, WV	5/11/2007	#5
9,14,30,35	1602 24 th Street, Parkersburg WV	6/5/2007	#6
20,	2003 Park Ave. Parkersburg, WV	1/10/2008	#7
21, 25	2810 17 th Ave. Vienna, WV	11/17/2008	#8

29. At all times relevant to the violations alleged herein, none of the sales transactions associated with the target housing listed above involved: (1) “a [s]ale of target housing at foreclosure,” as set forth in 40 C.F.R. § 745.101(a).

COUNTS 1 - 4

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(1)

In Relation To

Sales Transactions #2 through #5

30. The allegations contained in paragraphs 1 through 29, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
31. Pursuant to the “seller requirements” of 40 C.F.R. § 745.113(a)(1), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include

- an attachment containing a Lead Warning Statement with the language set forth in 40 C.F.R. § 745.113(a)(1), which language also is reprinted and set forth in paragraph 25, above.
32. Sales Transactions (sometimes referred to herein as “contract” or “Sales Contracts”) #2 through #5, above, each failed to include an attachment containing the Lead Warning Statement set forth in, and required by, 40 C.F.R. § 745.113(a)(1).
33. Respondent failed to ensure that a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(a)(1) was included as an attachment to Sales Transactions #2 through #5, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(1).
34. Respondent’s failure to ensure that a *Lead Warning Statement* containing the language set forth in 40 C.F.R. § 745.113(a)(1) was included as an attachment to sales transactions #2 through #5, constitutes four (4) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
35. Each of the four (4) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 1 through 4, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 5 - 9

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(2)

In Relation To

Sales Transactions #2 through #6

36. The allegations contained in paragraphs 1 through 35, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
37. Pursuant to the “*Seller requirements*” of 40 C.F.R. § 745.113(a)(2), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include an attachment containing a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold.
38. Sales Transactions #2 through #6 failed to include an attachment containing a statement

disclosing the presence of known lead-based paint in the respective target housing.

39. Respondent failed to ensure that a statement disclosing the presence of known lead-based paint in the target housing which is the subject of Sales Transactions #2 through #6 was included as an attachment to Sales Transactions #2 through #6, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(2).
40. Respondent's failure to ensure that an appropriate statement disclosing the presence of known lead-based paint in the target housing which is the subject of Sales Transactions #2 through #6 was included as an attachment to Sales Transactions #2 through #6 constitutes five (5) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
41. Each of the five (5) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 5 through 9, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 10 - 14

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(3)

In Relation To

Sales Transactions #2 through #6

42. The allegations contained in paragraphs 1 through 41, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
43. Pursuant to the "Seller requirements" of 40 C.F.R. § 745.113(a)(3), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include, as an attachment thereto, a list of any records or reports available to the seller pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the purchaser. If no such records are available, the seller shall so indicate.
44. Sales Transactions #2 through #6, above, failed to include as an attachment to the contract a list of any records or reports available to the seller pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the purchaser, or a statement that no such records are available.
45. Respondent failed to ensure that Sales Transactions #2 through #6, above, included as an

attachment to the contract, a list of any records or reports available to the seller pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the purchaser, or a statement that no such records are available, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(3).

46. Respondent's failure to ensure that Sales Transactions #2 through #6, above, included as an attachment to the contract a list of any records or reports available to the seller pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the purchaser, or a statement that no such records are available, constitutes five (5) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
47. Each of the five (5) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 10 through 14, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 15-21

Violation of 40 C.F.R. § 745.115(a)(2)

*Failure to ensure Compliance with the Requirements of
40 C.F.R. § 745.113(a)(4)*

In Relation To

Sales Transactions #1 through #5, and #7 through #8

48. The allegations contained in paragraphs 1 through 47, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
49. Pursuant to the "Seller requirements" of 40 C.F.R. § 745.113(a)(4), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include, as an attachment thereto, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) of the Disclosure Rule, and the lead hazard information pamphlet required under 15 U.S.C. 2696.
50. Sales Transactions #1 through #5, and #7 through #8, above, failed to include as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) of the Disclosure Rule, and the lead hazard information pamphlet required under 15 U.S.C. 2696.
51. Respondent failed to ensure that Sales Transactions #1 through #5, and #7 through #8,

above, included as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) of the Disclosure Rule, and the lead hazard information pamphlet required under 15 U.S.C. 2696, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(4).

52. Respondent's failure to ensure that Sales Transactions #1 through #5, and #7 through #8, above, included as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) of the Disclosure Rule and the lead hazard information pamphlet required under 15 U.S.C. 2696, constitutes seven (7) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
53. Each of the seven (7) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 15 through 21, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 22 - 25

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(5)

In Relation To

Sales Transactions #1, #2, #4, and #8

54. The allegations contained in paragraphs 1 through 53, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
55. Pursuant to the "Seller requirements" of 40 C.F.R. § 745.113(a)(5), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include, as an attachment thereto, a statement by the purchaser that he/she has either: 1) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or 2) Waived the opportunity.
56. Sales Transactions #1, #2, #4, and #8 each failed to include, as an attachment to the contract, a statement by the purchaser that he/she has either: 1) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or 2) Waived the opportunity.
57. Respondent failed to ensure that Sales Transactions #1, #2, #4, and #8, above, included

as an attachment to each such contract, a statement by the purchaser that he/she has either: 1) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or 2) Waived the opportunity, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(5).

58. Respondent's failure to ensure that Sales Transactions #1, #2, #4, and #8, above, included as an attachment to each such contract, a statement by the purchaser that he/she has either: 1) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or 2) Waived the opportunity, constitutes four (4) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and, RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
59. Each of the four (4) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 22 through 25, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 26 - 30

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(6)

In Relation To

Sales Transactions # 2 through #6

60. The allegations contained in paragraphs 1 through 59, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
61. Pursuant to the "*Seller requirements*" of 40 C.F.R. § 745.113(a)(6), which requirements are recited fully in paragraph 25, above, when one or more agents are involved in the transaction to sell target housing on behalf of the seller, each contract to sell target housing shall include, as an attachment thereto, a statement that: (1) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d); and (2) The agent is aware of his/her duty to ensure compliance with requirements of the Disclosure Rule (collectively referred to herein as "*Agent's Acknowledgment*").
62. Sales Transactions #2 through #6 each failed to include, as an attachment to the contract, the "*Agent's Acknowledgment*" set forth in paragraphs 60 and 25, above.
63. Respondent failed to ensure that Sales Transactions #2 through #6, above, included as an attachment to each such contract, the *Agent's Acknowledgment*, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(6).

64. Respondent's failure to ensure that Sales Transactions # 2 through #6, above, included as an attachment to each such contract, the Agent's Acknowledgment, constitutes five (5) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and, RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
65. Each of the five (5) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are identified and referred to as Counts 26 through 30, as further summarized and delineated in the chart set forth in paragraph 28, above.

COUNTS 31 - 35

Violation of 40 C.F.R. § 745.115(a)(2)

Failure to ensure Compliance with the Requirements of

40 C.F.R. § 745.113(a)(7)

In Relation To

Sales Transactions # 2 through #6

66. The allegations contained in paragraphs 1 through 65, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
67. Pursuant to the "*Seller requirements*" of 40 C.F.R. § 745.113(a)(7), which requirements are recited fully in paragraph 25, above, each contract to sell target housing shall include, as an attachment thereto, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature (hereinafter referred to as the "*Certification of Accuracy*").
68. Sales Transactions #2 through #6 each failed to include, as an attachment to the contract, the requisite "*Certification of Accuracy*" set forth in paragraphs 66 and 25, above.
69. Respondent failed to ensure that Sales Transactions #2 through #6, above, included as an attachment to each such contract, the "*Certification of Accuracy*", as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(7).
70. Respondent's failure to ensure that Sales Transactions # 2 through #6, above, included as an attachment to each such contract, the "*Certification of Accuracy*", constitutes five (5) separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and, RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).
71. Each of the five (5) violations alleged in the paragraph immediately above constitute separate counts for purposes of this Consent Agreement, which counts herein are

identified and referred to as Counts 31 through 35, as further summarized and delineated in the chart set forth in paragraph 28, above.

V. CIVIL PENALTY

72. Respondent agrees to pay the amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00), in satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in this Consent Agreement. Such civil penalty shall become due and payable immediately upon Respondent's 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, Respondent 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.
73. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, 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).
74. Payment of the civil penalty as required by Paragraph 72, above, shall be made via cashier's check by the Respondent according to the following payment methods, **made payable to the "United States Treasury,"** as follows:

By Regular US Postal Service Mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
contact: Eric Volck (513) 487-2105

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank

*In the Matter of:
ReMix, Properties of the Valley, Inc.*

*Consent Agreement
Docket No. TSCA-03-
2011-0039*

1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

contact: (314) 418-1028

Payment of the penalty as required by this CAFO may also be made by electronic wire transfer (EFT) to:

Wire Transfers

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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearinghouse (ACH) Transfers a/k/a Remittance Express (REX)

US Treasury REX/Cashlink ACH Receiver
ABA= 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX @ 1-866-234-5681

75. All payments by the Respondent shall include the Respondent's full name and address and the EPA Docket number of this Consent Agreement (TSCA-03-2011-0039).
76. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III

1650 Arch Street
Philadelphia, PA 19103-2029;

and

Benjamin M. Cohan
Sr. Assistant Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

77. 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.
78. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. 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).
79. 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.
80. 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).
81. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VI. EFFECT OF SETTLEMENT

82. Payment of the penalty specified in paragraph 72, above, in the manner set forth in paragraphs 74 through 76, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in paragraphs 77 through 80, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. OTHER APPLICABLE LAWS

83. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

VIII. CERTIFICATION OF COMPLIANCE

84. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as an "agent" for target housing lessors, presently 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.

IX. RESERVATION OF RIGHTS

85. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder at 40 C.F.R. Part 745, Subpart F, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.
86. Nothing in this CAFO shall constitute or be construed as a release of Respondent 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.

X. PARTIES BOUND

87. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

XI. EFFECTIVE DATE

88. The effective date of this Consent Agreement and the accompanying 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 EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XII. ENTIRE AGREEMENT

89. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIII. EXECUTION

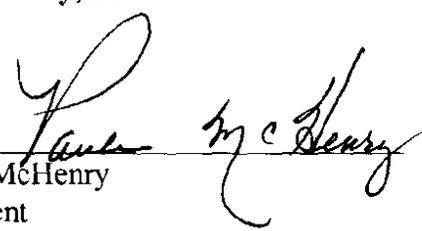
90. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind ~~REMAX Properties of the Valley, Inc.~~ ^{THE VALLEY} to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent, REMAX, Properties of the Valley, Inc.:

Date:

11/30/10

By:


Paula McHenry

President

ReMax, Properties of the Valley, Inc.

*In the Matter of:
ReMax, Properties of the Valley, Inc.*

*Consent Agreement
Docket No. TSCA-03-
2011-0039*

For Complainant:

Date: 12/16/10

By: 
Benjamin M. Cohan
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: 2/7/11

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

In the Matter of:	:	
	:	
Remax Properties of the Valley, Inc.	:	Docket No. TSCA-03-2011-0039
2510 Murdoch Avenue	:	
Parkersburg, West Virginia	:	
26101	:	FINAL ORDER
Respondent	:	

Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Remax Properties of the Valley, Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to 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, which authorizes 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 the Consolidated Rules of Practice, and having determined, based on the representations in the attached Consent Agreement, that the civil penalty agreed therein was based upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of THIRTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$13,500.00), and comply with the terms and conditions of the attached Consent Agreement.

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

Date:

2/10/11



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III