



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

APR 20 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5683

Kimberly A. Doucher, Esq.
Keener Doucher Kelly & Doucher, LPA
5080 Tuttle Crossing Boulevard
Suite 250
Columbus, OH 43016

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0009

Dear Ms. Doucher:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on April 20, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,016 is to be paid in the manner prescribed in paragraphs 65, 66 and 67. Please be certain that the number **BD 2750747X009** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 18, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Branch

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

THOMAS J. ABERNATHY)
COLUMBUS, OHIO)

Docket No. **TSCA-05-2007-0009**

Respondent.)
_____)

618 11 2007 11 8 19
10520

JOINT CIVIL COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency, Region 5 (U.S. EPA or the Agency), and Respondent, Thomas J. Abernathy, wishing to settle all matters pertaining to this case and having consented to the entry of this Joint Civil Complaint and Consent Agreement and Final Order (CAFO); NOW THEREFORE, before the taking of any testimony, without the adjudication of any issues of law or fact herein, the Agency and the Respondent, (jointly referred to as "the Parties"), consent to the entry of and agree to comply with the terms of this CAFO.

I. AUTHORITY AND JURISDICTION

1. This is a civil administrative action issued under the authority vested in the Administrator of the U.S. EPA by Section 16 (a) of the Toxic Substances Control Act, (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. The Respondent is Thomas J. Abernathy, who resides at 194 Chaucer Ct., Worthington, Ohio 43085.
4. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b), provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

II. STATUTORY AND REGULATORY REQUIREMENTS

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

6. On March 6, 1996, U.S. EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule).

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

8. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

9. Owners of more than four residential dwellings must comply with Subpart F by September 6, 1996 pursuant to 40 C.F.R. § 745.102(a). Owners of one to four residential dwellings must comply with Subpart F by December 6, 1996 pursuant to 40 C.F.R. § 745.102(b).

10. 40 C.F.R. § 745.103 defines “owner” as 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.

11. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.103 defines “purchaser” as an entity that enters into an agreement to purchase target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

15. Section 745.107(a)(1) of the Disclosure Rule, 40 C.F.R. § 745.107(a)(1), requires the lessor of target housing to provide the lessee with a U.S. EPA-approved lead hazard information pamphlet before the lessee is obligated under any contract to lease target housing.

16. Sections 745.100 and 745.113(b)(1) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(b)(1) require the lessor to provide the lessee with a Lead Warning Statement that contains specific language as required by the regulations, within each contract to lease target housing, or as an attachment to such contract, prior to the lessee being obligated under such contract.

17. Sections 745.100 and 745.113(b)(2) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(b)(2) require the lessor to provide the lessee with a statement by the lessor disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, within the contract to lease target housing, or as an attachment to such contract, prior to the lessee being obligated under such contract.

18. Sections 745.100 and 745.113(b)(3) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(b)(3) requires the lessor provide the lessee with a list of any records or reports, available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, within the contract to lease target housing, or as an attachment to such contract, prior to the lessee being obligated under such contract.

19. Sections 745.100 and 745.113(b)(4) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(b)(4) require the lessor to include within each contract to lease target housing, or as an attachment to such contract, a statement by the lessee, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3) and the lead hazard information pamphlet required by 40 C.F.R. § 745.107(a)(1) and 15 U.S.C. 2696, prior to the lessee being obligated under such contract.

20. Sections 745.100 and 745.113(b)(6) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(b)(6) require the lessor to include within each contract to lease target housing, or as an attachment to such contract, the signature of the lessor and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, prior to the lessee being obligated under such contract.

21. Section 745.107(a)(1) of the Disclosure Rule, 40 C.F.R. § 745.107(a)(1), requires the seller of target housing to provide the purchaser with a U.S. EPA-approved lead hazard

information pamphlet before the purchaser is obligated under a contract to purchase target housing.

22. Sections 745.100 and 745.113(a)(1) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(1), require the seller to provide the purchaser with a Lead Warning Statement within each contract to purchase target housing, or as an attachment to such contract, prior to the purchaser being obligated under such contract.

23. Sections 745.100 and 745.113(a)(2) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(2), require the seller to provide the purchaser with a statement by the seller disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in the contract to sell target housing, or as an attachment to such contract, prior to the purchaser being obligated under such contract.

24. Sections 745.100 and 745.113(a)(3) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(3) require the seller to provide the purchaser with a list of any records or reports, available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, in the contract to purchase target housing, or as an attachment to such contract, prior to the purchaser being obligated under such contract.

25. Sections 745.100 and 745.113(a)(4) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(4) require the seller to include within each contract to purchase target housing, or as an attachment to such contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §745.113(a)(2) and 40 C.F.R. § 745.113(a)(3) and the lead hazard information pamphlet required by 40 C.F.R. § 745.107(a)(1) and 15 U.S.C. § 2696, prior to the purchaser being obligated under such contract.

26. Sections 745.100 and 745.113(a)(5) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(5) require the seller to include within each contract to purchase target housing, or as an attachment to such contract, a statement by the purchaser that he/she has either received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a), or waives the opportunity, prior to the purchaser being obligated under such contract.

27. Sections 745.100 and 745.113(a)(7) of the Disclosure Rule, 40 C.F.R. §§ 745.100 and 745.113(a)(7) require the seller to include within each contract to purchase, or as an attachment to the contract, the signature of the seller and the purchaser certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

28. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and of 42 U.S.C. § 4852d (b)(5), which subjects the violator to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

III. STIPULATED FACTS

29. Between January 1, 2004 and December 17, 2004, Respondent was the owner and/or held legal title to a residential property located at 661 Dennison Avenue, Columbus, Ohio, 43215 (“the duplex”).

30. The duplex was constructed prior to 1978.

31. The duplex referenced in paragraph 29, above, is “target housing” as defined in 40 C.F.R. § 745.103.

32. On January 23, 2004, Respondent entered into a written agreement titled *Residential Lease* (“contract to lease”), with Robert B. Prindle and Marley Thompson-Prindle, to lease a unit within the duplex referenced in paragraph 29, above.

33. As a result of entering into the contract to lease, Respondent became a “lessor” as that term is defined in 40 C.F.R. § 745.103.

34. As a result of entering into the contract to lease, and agreeing to pay rent in exchange for occupancy of the rental property at 661 Dennison Avenue, Columbus, Ohio, 43215, Robert B. Prindle and Marley Thompson-Prindle became “lessees” as that term is defined in 40 C.F.R. § 745.103.

35. At the time that they entered into the contract to lease, referenced in paragraph 32, above, Robert B. Prindle and Marley Thompson-Prindle lived with their six-year old daughter and were expecting their second child. Mrs. Prindle was approximately four months pregnant at that time.

36. On or about February 1, 2004, Robert B. Prindle, Marley Thompson-Prindle, who was pregnant with their second child, and their six-year old daughter, moved into a rental unit in the duplex that was owned by Respondent.

37. On December 17, 2004, Mr. Prindle had their rental unit within Respondent’s duplex tested for the presence of lead-based paints and/or lead-based paint hazards, and, as a result, was informed that there were lead-based paint hazards located throughout their rental unit.

38. On December 17, 2004, the Mr. Prindle personally provided Respondent with the test results that indicated the presence of lead-based paint hazards throughout their rental unit within Respondent’s duplex.

39. On October 22, 2004, Respondent entered into a written agreement, titled Real Estate Purchase Contract (“contract to purchase”), with Ms. Nicole M. Gilligan to sell Ms. Gilligan his duplex referenced in paragraph 29, above.

40. As a result of entering into a contract to purchase regarding the duplex referenced in paragraph 29, above, Nicole M. Gilligan became a “purchaser,” as that term is defined in 40 C.F.R. § 745.103.

41. On or about December 18, 2004, Nicole M. Gilligan became the owner of the duplex.

42. As a result of transferring title to the duplex referenced in paragraph 29, above, to Ms. Gilligan, Respondent became a “seller” as that term is defined in 40 C.F.R. § 745.103.

IV. ALLEGED VIOLATIONS

43. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent did not provide a U.S. EPA-approved lead information pamphlet to Robert B. Prindle and Marley Thompson-Prindle, the lessees, before the lessees became obligated under the contract to lease targeted property, that is referenced in paragraphs 29, above, as required by 40 C.F.R. § 745.107(a)(1).

44. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent failed to provide Robert B. Prindle and Marley Thompson-Prindle, the lessees, with a Lead Warning Statement within the contract to lease target housing, or as an attachment to that contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(1).

45. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent failed to provide Robert B. Prindle and Marley Thompson-Prindle, the lessees, with Respondent’s/the lessor’s statement, disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, within the contract to lease target housing, or as an attachment to that contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(2).

46. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent failed to provide Robert B. Prindle and Marley Thompson-Prindle, the lessees, with a list of any records or reports, available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, within the contract to lease target housing, or as an attachment to such contract, prior to the lessee being obligated under such contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(3).

47. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent failed to include within the contract to lease target housing, or as an attachment to the contract, a statement from Robert B. Prindle and Marley Thompson-Prindle, the lessees, affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3), and the lead hazard information pamphlet required by 40 C.F.R. § 745.107(a)(1) and 15 U.S.C. 2696, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(4).

48. For the residential property and contract to lease referenced above in paragraphs 29 and 32, respectively, U.S. EPA alleges that Respondent failed to include within the contract to lease target housing, or as an attachment to the contract, his signature and that of Robert B. Prindle and Marley Thompson-Prindle, the lessees, certifying to the accuracy of their statements along with the dates of such signatures, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(6).

49. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent did not provide a U.S. EPA-approved lead information pamphlet to Nicole M. Gilligan, the purchaser of Respondent's target housing, before the purchaser became obligated under the contract to purchase the target housing that is

referenced in paragraph 29, above, as required by 40 C.F.R. § 745.100 and 42 U.S.C. 4852d(b)(5).

50. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to provide Nicole M. Gilligan, the purchaser, with a Lead Warning Statement within the contract to purchase target housing, or as an attachment to that contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(1).

51. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to provide Nicole M. Gilligan, the purchaser with a statement by the seller disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in the contract to purchase target housing, or as an attachment to such contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(2).

52. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to provide Nicole M. Gilligan, the purchaser with a list of any records or reports, available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, in the contract to purchase target housing, or as an attachment to such contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(3).

53. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to include within the contract to purchase target housing, or as an attachment to such contract, a statement from Nicole M. Gilligan, the purchaser, affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.113(a)(3) and the lead hazard information pamphlet required by 40 C.F.R.

§ 745.107(a)(1) and 15 U.S.C. § 2696, prior to the purchaser being obligated under such contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(4).

54. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to include within the contract to purchase target housing, or as an attachment to the contract, a statement by Nicole M. Gilligan, the purchaser that she had either received the opportunity to conduct risk assessment or inspection required by 40 C.F.R. § 745.110(a), or waived the opportunity, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(5).

55. For the residential property and contract to purchase referenced above in paragraphs 29 and 39, respectively, U.S. EPA alleges that Respondent failed to include within the contract to purchase, or as an attachment to the contract, his signature as the seller and that of Nicole M. Gilligan, the purchaser, certifying to the accuracy of their statements along with the dates of such signatures, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(7).

V. PENALTY CALCULATION

56. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, requires U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation occurring or continuing on or after January 31, 1997, through March 14, 2004; and \$32,500 per day for violations occurring on or after March 15, 2004. See 40 C.F.R. § 19 and 69 Fed. Reg. 7126 (February 13, 2004).

57. In determining a civil penalty, U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator,

ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such factors as justice may require.

58. In consideration of the cooperation displayed by the Respondent, and the manner in which the parties reached settlement in this matter, and other factors as justice may require, U.S. EPA agrees to mitigate the proposed penalty from \$72,600 to \$10,164.

59. In consideration of Respondent's agreement to perform a Supplemental Environmental Project (SEP), in the form of the Window Replacement Project specified in paragraphs 71 to 82, below, U.S. EPA agrees to further mitigate the penalty of \$10,164 to \$1,016.

VI. OPPORTUNITY TO REQUEST A HEARING

60. Upon signing this agreement, Respondent waives all rights to request a judicial or administrative hearing under the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing, and their right to appellate review of the final order. This waiver includes any right to contest the appropriateness of the amount of the proposed and final penalty.

VII. TERMS OF SETTLEMENT

61. Respondent admits the jurisdictional allegations contained in this Consent Agreement and Final Order and neither admits or denies the factual allegations contained in this CAFO.

62. Respondent waives his right to a hearing on the allegations in this CAFO, and his right to appeal. 40 C.F.R. § 22.18.

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

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

65. Respondent shall pay the \$1,016 civil penalty by cashier's or certified check payable to the "*Treasurer, United States of America,*" within 30 days after the effective date of this CAFO.

66. Respondent shall send the check to:

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

67. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

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

Estrella Calvo, (DT-8J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Cynthia Kawakami, (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

68. This civil penalty is not deductible for Federal tax purposes.

69. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraphs 80 and 82, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

70. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901(b). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

Supplemental Environmental Project/Window Replacement Project

71. Respondent must complete a Window Replacement Project designed to protect against potential lead-based paint hazards by replacing a total of eleven (11) windows in the residential property that he owns, located at 115 East Maynard Avenue, Columbus, Ohio 43202.

72. The Window Replacement Project must be conducted in compliance with the U.S. Department of Housing and Urban Development (*HUD*) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform lead-based paint abatement under state and local laws and regulations.

73. Respondent must perform standard lead clearance testing upon completion of the Window Replacement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform lead-based paint abatement under state and local laws and regulations, in the property listed in paragraph 71 above. The individual (company) executing the standard lead clearance sampling must not be paid or employed or, otherwise compensated by the individuals conducting the Window Replacement Project.

74. Respondent must spend at least \$9,148 (\$10,164 less \$1,016) to complete the Window Replacement Project.

75. Respondent certifies that he is not required to perform the Window Replacement Project by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date that he signs this CAFO. Respondent further certified that he has not received and is not negotiating to receive credit for the Window Replacement Project in any other enforcement action.

76. U.S. EPA may inspect the property at any time to monitor Respondent's compliance with this CAFO's requirements. Any access to the building or units, therein, will be provided upon reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for each access.

77. Respondent must submit a Window Replacement Project report and lead clearance sampling report upon completion of the Window Replacement Project for the property listed in paragraph 71 above, within four months following entry of the CAFO. These reports must contain the following information:

- a. a description of the Window Replacement Project as completed at the property listed in paragraph 71 above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property listed in paragraph 71 above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual costs of the goods and services; including receipts for the cost of the lead-based paint inspection conducted to identify the lead-based paint and/or lead-based paint hazards in the building;

- d. itemized costs of services used to complete the lead clearance sampling documented by copies of invoices or cancelled checks that specifically identify and itemize the costs of these services;
- e. documentation that the individuals who performed the Window Replacement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local laws and regulations;
- f. a certification that Respondent has completed the Window Replacement Project and the lead clearance sampling in compliance with this CAFO;
- g. a statement that no tax returns filed or to be filed by Thomas J. Abernathy (individually, and/or jointly with any other individual) will contain deductions or depreciations for any expense associated with the Window Replacement Project for federal tax purposes.

78. Respondent must submit all notices and reports required by this CAFO by first class U.S. mail to Estrella Calvo, at the address listed in paragraph 67, above.

79. In each report that Respondent must submit as required by this CAFO, he or his authorized representative must certify that the report is true and complete by including the following statement signed by the Respondent:

I certify that I am familiar with the information in this document and that, based upon my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

80. If Respondent violates any requirement of this CAFO relating to the Window Replacement Project and sampling, Respondent must pay stipulated penalties to the United States in addition to the \$1,016 penalty described in paragraph 59, as follows:

- a. If Respondent does not complete the Window Replacement Project and lead clearance sampling according to this CAFO, but spends less than \$9,148, Respondent must pay a stipulated penalty of \$9,148 (which is \$10,164 less \$1,016).
- b. If Respondent satisfactorily completes the Window Replacement Project and lead clearance sampling according to this CAFO, but spends less than \$9,148,

Respondent must pay the difference between \$9,148 and the actual amount spent;

- c. If Respondent fails to ensure and document that lead clearance sampling work for the property listed in paragraph 71, above, is executed by individuals certified to perform lead-based paint abatement in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, he shall pay a stipulated penalty of \$4,574; and
- d. If Respondent fails to submit timely the Window Replacement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 77, above, or if Respondent fails to satisfactorily address each requirement in the Window Replacement completion report paragraphs of this CAFO, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$9,148, above.

81. U.S. EPA's reasonable and good faith determination of whether Respondent satisfactorily completed the Window Replacement Project and lead clearance sampling and whether they made good faith, timely efforts to complete the Window Replacement Project and lead clearance sampling will bind Respondent for the purposes of this CAFO.

82. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the method of payment specified in paragraphs 65 through 70, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

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

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

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

86. The terms of the CAFO binds the Respondent and his assigns, and in the event of any conveyance of the subject property, the successors and assigns of said conveyance.

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

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

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

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

**Consent Agreement and Final Order
In the Matter of: Thomas J. Abernathy**

Docket No. TSCA-05-2007-0009

Date: 3-26-07

By: Thomas J. Abernathy
Thomas J. Abernathy, Respondent

**United States Environmental Protection Agency,
Complainant**

Date: April 13, 2007

By: Mardi Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch

Date: April 17, 2007

By: Walter H. Harris
for Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

**In the Matter of:
Thomas J. Abernathy**

Docket No. TSCA-05-2007-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5. IT IS SO ORDERED.

Date: 4/19/07

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

APR 19 2007
REGIONAL HEARING CLERK
U.S. EPA
REGION 5

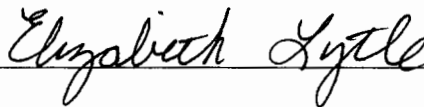
CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Thomas J. Abernathy, was filed on April 20, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5683, a copy of the original to the Respondent's Agent:

Kimberly A. Doucher, Esq.
Keener Doucher Kelly & Doucher, LPA
5080 Tuttle Crossing Boulevard
Suite 250
Columbus, OH 43016

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Cynthia Kawakami, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. **TSCA-05-2007-0009**

EPA REGION 5
APR 20 2007
CHICAGO, ILLINOIS