



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
AUG 11 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6143

Robert Hash
9200 Keystone Crossing
Suite 420
Indianapolis, Indiana 46240

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2008 AUG 11 AM 10:10

Re: In the Matter of: Edward L. Murray, Jr.
Consent Agreement and Final Order, Docket No. TSCA -05-2007-0013

Dear Mr. Hash:

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 August 11, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,755.00 is to be paid in the manner described in paragraphs 9 and 10. Please be certain that the number **BD 2750847X012** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 10, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace
Pesticides and Toxic Compliance Section

Enclosures

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2007-0013
)	
Edward L. Murray, Jr.)	Proceeding to Assess a Civil Penalty
Indianapolis, Indiana)	Under Section 16(a) of the Toxic
)	Substance Control Act
Respondent.)	
_____)	

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Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this administrative action seeking a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. On August 16, 2007, U.S. EPA filed the Complaint in this action against Respondent, Edward L. Murray, Jr. (Respondent or Murray). The Complaint alleges that Respondent violated Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. §§ 745.113(b) in ten contracts to lease target housing.

3. Respondent filed an Answer denying the alleged violations and requested a hearing in this matter.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted or denied in his Answer.

5. Respondent waives any right to appeal this Consent Agreement and Final Order

(CAFO).

6. Respondent certifies, to the best of his knowledge, that he is complying fully with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations at 40 C.F.R. Part 745.

7. Respondent settles this action upon the terms of this CAFO as a means to resolve this action without further delay or litigation and consents to the assessment of the civil penalty stated in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalties

9. In consideration of Respondent's agreement to perform a supplemental environmental project (SEP), U.S. EPA agrees to mitigate the proposed penalty of \$27,170 to a \$4,755.00 cash penalty and \$10,000 for lead remediation at the properties addressed in the Complaint.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$4,755.00 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
(for checks sent by regular U.S. Postal Service mail); or to

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

(for checks sent by express mail)

The check must state the case title, the docket number of this CAFO, and the billing document number.

11. In addition, a transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

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

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

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

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

13. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 24, below, the U.S. EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any civil penalty amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must

pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. The collection of interest and administrative costs imposed pursuant to this section shall be waived on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. In addition, Respondent must pay a six (6) percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

15. Respondent must complete a Supplemental Environmental Project (SEP), hereinafter referred to as a “Window Replacement Project,” designed to protect tenants from potential lead-based paint hazards by replacing approximately a total of 40 windows in the following target housing in Indianapolis, Indiana: 3116 Boulevard Place; 952 East 34th; 3252 Nicholas; and 2531 Broadway (the Properties). The Properties were constructed before 1978. Respondent must spend at least \$10,000 to replace windows at the Properties.

16. The Window Replacement Project must be conducted in compliance with the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and must be conducted by individuals certified to perform such work under state and local laws and regulations.

17. Respondent must perform standard lead clearance testing upon completion of the Window Replacement Project using the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995). The lead clearance test must be completed by individuals certified to perform such work under state and local laws. The cost of the lead clearance test shall be applied towards the required expenditure of \$10,000.

18. The individuals conducting the Window Replacement Project and the individuals conducting the standard lead clearance testing shall not be the same.

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

20. The U.S. EPA, in accordance with its inspection authority, may inspect the target housing to monitor Respondent's compliance with this CAFO's SEP requirements.

21. Respondent must submit all notices and reports required by the CAFO by first class mail to Terence Bonace, at the address in paragraph 11, above.

22. Respondent must submit a Window Replacement Project report and lead clearance testing report upon completion of the Window Replacement Project for the property listed in paragraph 15, above, within six months following entry of the CAFO. This report must contain the following information:

- a. a description of the Window Replacement Project as completed at the properties listed in paragraph 15, above, which includes the testing information outlined in subparagraph b, below;
- b. a clearance testing report for the properties listed in paragraph 15, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized cost of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual cost 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 properties;
- d. itemized cost of services used to complete the lead clearance testing documented by copies of invoices or canceled checks that specifically identify and itemize the cost of the services;
- e. documentation that the individuals who performed the Window Replacement Project and the lead clearance testing are certified to perform such work in accordance with the state and local laws and regulations;

- f. certification that Respondent has completed the Window Replacement Project and the lead clearance testing in compliance with this CAFO; and,
- g. a statement that no tax returns filed or to be filed by Edward L. Murray, Jr. will contain deductions or depreciations for any expense associated with the Window Replacement Project.

23. In each report that Respondent submits as provided 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 on 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.

24. If Respondent violates requirements of this CAFO relating to the Window Replacement Project, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent does not complete any portion of the Window Replacement Project and lead clearance testing according to this CAFO, Respondent must pay a stipulated penalty of \$10,000;
- b. If Respondent satisfactorily completes the Window Replacement Project and lead clearance testing according to this CAFO, but spends less than \$10,000, Respondent must pay the difference between \$10,000 and the actual amount spent;
- c. If Respondent fails to ensure and document that lead clearance testing work for each property listed in paragraph 15, above, is executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745, and applicable state and local laws and regulations, Respondent shall pay a stipulated penalty of \$10,000.
- d. If Respondent fails to ensure and document that the Window Replacement Project complies with the requirements of paragraphs 15 through 18, above, Respondent shall pay a stipulated penalty of \$10,000; and,
- e. If Respondent fails to timely submit the Window Replacement Project completion report and the lead clearance testing completion report addressing each of the requirements in paragraph 22, above, or if Respondent fails to

satisfactorily address each requirement in the window replacement completion report paragraphs of the 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 \$10,000.

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

27. Respondent must pay any stipulated penalties within 30 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 10, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

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

29. Any public statement that Respondent makes referring to the SEP must include the following language, "Edward L. Murray, Jr. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Edward L. Murray, Jr. for alleged violations of Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851."

General Provisions

30. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

31. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

32. This CAFO does not affect Respondent's responsibility to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and other applicable federal, state,

and local laws.

- 33. The terms of this CAFO bind Respondent, his successors, and assigns.
- 34. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
- 35. Each party agrees to bear its own costs and attorney's fees in this action.
- 36. This CAFO constitutes and entire agreement between the parties.

Edward L. Murray, Respondent

7/31/08
Date

Edward L. Murray
Edward L. Murray

United States Environmental Protection Agency, Complainant

8/6/08
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

**In the Matter of:
Edward L. Murray
Docket No. TSCA-05-2007-0013**

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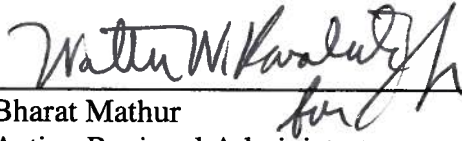
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/7/08

Date



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

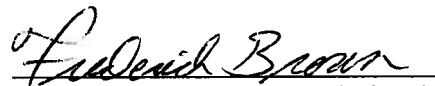
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administration involving Edward L. Murray, Jr. was filed on August 11, 2008 with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0005 8921 6143, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Robert Hash
9200 Keystone Crossing
Suite 420
Indianapolis, Indiana 46240

and forwarded intra-Agency copies to:

Susan Biro, Administrative Law Judge, 1900-L
Cynthia King, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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