



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

MAY 19 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7665 9437

Mr. Anthony J. Giuliani  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

CWB Management Company TSCA-05-2011-0008

Dear Mr. Giuliani:

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 May 19, 2011, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,336.50 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number BD 2751147X007 and the docket number are written on both the transmittal letter and on the check. Payment is due by June 18, 2011, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*Christine Anderson*

Christine Anderson  
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:

CWB Management Company  
Dublin, Ohio

Respondent.

RECEIVED  
MAY 19 2011  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

Docket No. TSCA-05-2011-0008

Proceeding to Assess a Civil  
Penalty Under Section 16(a) of the  
Toxic Substances Control Act,  
15 U.S.C. § 2615(a)

**Consent Agreement and Final Order Commencing and Concluding the Proceeding**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is CWB Management Company, a corporation, with a place of business located at 5775 Perimeter Drive, Suite 290, Dublin, Ohio 43107.
4. At all times relevant to the allegations in this Complaint, CWB Management Company acted as an agent for lessor Cedar Apartments located at 2705 West Central Ave. and 2711 W. Central Ave., Toledo, Ohio.
5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

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

11. On March 6, 1996, 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) pursuant to 42 U.S.C. § 4852d.

12. 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 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

13. 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.

14. 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.

15. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a 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.

16. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; 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; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and, the signatures and dates of signature of the lessor and the lessee certifying the accuracy of their statements.

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

18. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

**Factual Allegations and Alleged Violations**

19. Between September 12, 2006 and July 29, 2008, Respondent managed apartment buildings at 2705 W. Central Ave., and 2711 W. Central Ave., Toledo, Ohio (Respondent's Properties).

20. Respondent's Properties were constructed prior to 1978.

21. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

22. On the following date(s), Respondent entered into the following nine written lease agreements (contracts) with individuals for the lease of Respondent's apartment units in Toledo, Ohio:

<b>Address</b>	<b>Unit</b>	<b>Lessee</b>	<b>Date of Lease</b>
2705 W. Central Ave., Toledo, Ohio	D1	Wanying Bin	August 6, 2007
2711 W. Central Ave., Toledo, Ohio	A2	Steven J. Chismar	May 1, 2008
2711 W. Central Ave., Toledo, Ohio	A2	Lisa Johnson	May 10, 2007
2711 W. Central Ave., Toledo, Ohio	A8	Yiyang Zhang	February 1, 2008
2711 W. Central Ave., Toledo, Ohio	C2	Sharmila Jayanty	July 29, 2008
2711 W. Central Ave., Toledo, Ohio	C5	Cierra Sandifer	December 7, 2007
2711 W. Central Ave., Toledo, Ohio	E8	Shatara Brown	January 24, 2008
2711 W. Central Ave., Toledo, Ohio	F4	Rita Washington	August 16, 2007
2711 W. Central Ave., Toledo, Ohio	G6	Lasheena Runner	April 23, 2008

23. Each of the contracts referred to in paragraph 22, above, covered a term of occupancy greater than 100 days.

24. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because it offered the target housing referred to in paragraph 22, above, for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 22, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

26. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's properties, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent's properties, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent's properties, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent's properties, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondent failed to include the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Civil Penalty**

31. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$2,336.50. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007. Pursuant to that policy, Complainant determined that Respondent was entitled to a 95% reduction in the initial proposed penalty of \$46,730. Respondent provided EPA with appropriate documentation, including the results from a lead inspection conducted in accordance with HUD Guidelines for Assessment of Lead-Based Paint and Lead-Based Paint Hazards in Target Housing, that clearly demonstrates that the target housing was found by a certified inspector to have been lead-based paint free at the time of the alleged violations.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,336.50 civil penalty for the alleged TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

***[for checks sent by regular U.S. Postal Service mail]***

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

***[for checks sent by express mail]***

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

The check must state the case title, "CWB Management Company, Dublin, Ohio," the docket number of this CAFO, and the billing document number.

33. A transmittal letter stating Respondent's name, the case title, Respondent's 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Christine L. Anderson (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Robert L. Thompson (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604]

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

35. If Respondent does not pay the civil penalty timely, 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.



36. 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 amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

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

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

39. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

40. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

41. The terms of this CAFO bind Respondent, and its successors and assigns.

42. 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.

43. Each party agrees to bear its own costs and attorney's fees in this action.

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

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


**CWB Management Company, Respondent**

4-25-11  
Date

  
Kenneth J. Castrop  
Secretary-Treasurer  
CWB Property Management, Inc.

**United States Environmental Protection Agency, Complainant**

5/13/11  
Date


  
for Richard C. Karl  
Acting Director  
Land and Chemicals Division

**In the Matter of:  
CWB Management Company  
Docket No. TSCA-05-2011-0008**

**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.

5-17-11  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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REGION 5

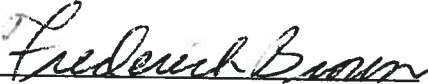
**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving CWB Management Company, Dublin, Ohio, was filed on May 19, 2011, with the Regional Hearing Clerk (E-19J), 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.7009 1680 0000 7665 9437 to:

Mr. Anthony J Giuliani  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Robert L. Thompson, 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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