



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 03 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7665 8591

Mr. and Mrs. Anthony Muffoletto
15383 Whispering Oak Drive
Mishawaka, Indiana 46545

Mr. and Mrs. Anthony Muffoletto, Consent Agreement and Final Order
Docket No. TSCA-05-2011-0014

Dear Mr. and Mrs A. Muffoletto:

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 3, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,341.00 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the number **BD 2751167X013** and the docket number are written on both the transmittal letter and on the check. Payments are due by the installment dates listed in this CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christine Anderson".

Christine Anderson
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
John P. Steketee, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2011-0014
)
Mr. and Mrs. Anthony Muffoletto,) Proceeding to Assess a Civil Penalty
Mishawaka, Indiana,) Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)
Respondents.)

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PROTECTION AGENCY

CONSENT AGREEMENT AND FINAL ORDER

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. Respondents are Mr. and Mrs. Anthony Muffoletto of Mishawaka, Indiana who are persons doing business as CDP Enterprise LLC in the State of Indiana.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. 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.

6. Respondents consent to the terms of this CAFO and to the assessment of the civil penalty specified herein.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondents waive their 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

9. 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.

10. 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.

11. 40 C.F.R. § 745.103 defines target housing as any housing constructed prior to 1978.

12. 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 and corporations.

13. 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.

14. 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 lessee certifying the accuracy of their statements.

15. 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).

16. 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

17. Between at least August 1, 2006 and January 27, 2009, Respondents owned residential dwellings at 446 South Jackson Street, 1650 Fremont Street, 410

North Eddy Street, 616 Johnson Street, and 1419 Van Buren, South Bend, Indiana.
(Respondents' Properties).

18. Respondents' Properties were constructed prior to 1978.

19. Respondents' Properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On January 27, 2009, Complainant conducted an inspection of Respondents seeking, among other things, copies of rental agreements and lead-based paint disclosure documentation for rental transactions at residential dwellings owned or managed by Respondents.

21. On the following date(s), Respondents entered into the following five written lease agreements (contracts) with individuals for the lease of Respondents' residential dwellings:

Address	Date of Lease
446 South Jackson Street, South Bend, Indiana	May 6, 2008
1650 Fremont Street, South Bend, Indiana	August 1, 2006
410 North Eddy Street, South Bend, Indiana	January 25, 2008
616 Johnson Street, South Bend, Indiana	February 1, 2008
1419 Van Buren, South Bend, Indiana	January 27, 2008

22. Each of the five contracts referenced in paragraph 21, above, covered a term of occupancy greater than 100-days.

23. Between August 1, 2006 and January 27, 2009, Respondents offered for lease his residential dwellings, and individuals entered into contracts on the dates listed in paragraph 21, above, to lease those dwellings.

24. Respondents are a “lessor”, as defined in 40 C.F.R. § 745.103, because he has offered the target housing referenced in paragraph 21, above, for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of a dwelling, referenced in paragraph 21, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

26. Respondents failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondents’ properties listed in paragraph 21, above, 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. Respondents 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 Respondents’ properties listed in paragraph 21, above, 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. Respondents failed to include a list of any records or reports available to the lessor regarding lead-based paint 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 Respondents’ properties listed in paragraph 21, above, 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. Respondents 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 Respondents' properties listed in paragraph 21, above, 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. Respondents 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 Respondents' properties listed in paragraph 21, above, 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 Two Thousand, Three Hundred and Forty One Dollars and No Cents (\$2,341).

32. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondents' 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.

33. Respondents must pay the \$2,341 penalty in five equal installments with interest, at the current interest rate of 1% per annum, as established by the U.S. Department of Treasury, as follows: 1) 30 days after the effective date of this CAFO, Respondents must pay \$468; 2) 150 days after the effective date of this CAFO, Respondents must pay \$487; 3) 270 days after the effective date of this CAFO, Respondents must pay \$482; 4) 390 days after the effective date of this CAFO,

Respondents must pay \$477; and 5) 510 days after the effective date of this CAFO, Respondents must pay \$473. Should Respondents choose to pay any remaining portion of the entire proposed civil settlement penalty prior to the due date(s) required under this agreement, Respondents may do so as long as the civil penalty payment also includes the payment of all of the per annum interest on the remaining balance.

34. Respondents must pay the installments 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, Missouri 63197-9000

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

35. A transmittal letter stating Respondents' name, the case title, Respondents' complete address, the case docket number and the billing document number must accompany each payment. Respondents must send a copy of each check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and

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

and

John P. Steketee (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

37. If Respondents do not pay an installment payment as set forth in paragraph 33, above, the entire unpaid balance of the civil penalty, and any other amount required by paragraph 33, above, will become due and owing upon written notice by U.S. EPA to Respondents of the delinquency. U.S. EPA may bring a civil action in United States district court 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.

38. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount ninety (90) days past due.

General Provisions

39. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

40. 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.

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

42. Respondents certify that they are complying with the Lead Act and the Disclosure Rule.

43. The terms of this CAFO bind Respondents, and their successors and assigns.

44. 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.

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

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

**In the Matter of Mr. and Mrs. Anthony Muffoletto,
Mishawaka, Indiana,
Docket No.**

Mr. and Mrs. Anthony Muffoletto, Mishawaka, Indiana, Respondents

July 11, 2011
Date

Mrs. Ann Muffoletto
Anthony Muffoletto
Mr. and Mrs. Anthony Muffoletto
Mishawaka, Indiana

United States Environmental Protection Agency, Region 5, Complainant

7/29/11
Date

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

**In the Matter of Mr. and Mrs. Anthony Muffoletto,
Mishawaka, Indiana,
Docket No. TSCA-05-2011-0014**

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.

7-29-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection
Agency, Region 5

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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 Mr. and Mrs Muffoletto, was filed on August 3, 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 8591 to:

Mr. and Mrs. Anthony Muffoletto
15383 Whispering Oak Drive
Mishawaka, Indiana 46545

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John P. Steketee, 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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