

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

In the Matter of:

**Harmony Homes, Inc.
919 S. Highland Ave.
Baltimore, MD 21224**

**U.S. EPA Docket No.
TSCA-03-2010-0403**

RESPONDENT.

**PROCEEDING UNDER
SECTION 16(a) OF THE
TOXIC SUBSTANCES
CONTROL ACT ("TSCA"),
15 U.S.C. § 2615(a).**

**1805 N. Chester Street, Baltimore, MD 21213
2522 E. Federal Street, Baltimore, MD 21213
2607 Ulewelyn Ave., Baltimore, MD 21213
934 N. Madeira Street, Baltimore, MD 21205
1718 N. Montford Ave., Baltimore, MD 21213
1719 N. Montford Ave., Baltimore, MD 21213
617 N. Pulaski Street, Baltimore, MD 21217**

TARGET HOUSING.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant") and Harmony Homes, 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.
2. The claims settled 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, at 40 C.F.R. Part 745, Subpart F, as set forth in the Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") signed by Complainant on September 27, 2010 and filed by Complainant against Respondent on September 28, 2010, concerning the seven lease transactions for the seven Target Housing units identified in the Complaint. The addresses for the Target Housing are also set forth above in the caption to this matter. Such 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.

II. JURISDICTION

3. 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

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint, in this Consent Agreement, and in the attached Final Order.
5. Except as provided in Paragraph 4, immediately above, for the purposes of this proceeding only, Respondent neither admits nor denies the specific factual allegations set forth in the Complaint and this Consent Agreement.
6. 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 (collectively, the "CAFO"), or the enforcement thereof.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in the Complaint or this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The Findings of Fact and Conclusions of Law set forth in the Complaint are incorporated into this Consent Agreement as if fully set forth at length herein.

V. CIVIL PENALTY

11. Respondent agrees to pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00), in settlement and satisfaction of all claims for civil penalties which Complainant may have against Respondent under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) for the specific violations alleged in the Complaint. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO, subject to Paragraph 13 below. 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.

12. The Parties agree 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 of TSCA, 15 U.S.C. § 2615, *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).

13. Respondent shall pay the civil penalty amount set forth above in Paragraph 11, above, plus any interest, administrative fees and late payment penalties, in accordance with Paragraphs 16, 17, and 18, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by the Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (TSCA-03-2010-0403).

b. All checks shall be made payable to "**United States Treasury**".

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Contact: 513-487-2123

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

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

Contact: 314-418-1028

e. All payments by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

f. All electronic payments made through the automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA No. 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 ~ checking

Physical Location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Contact: 301-887-6548 or REX, 1-866-234-5681

g. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter "sfo 1.1" in the search field. Open and complete the form.

h. Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

14. At the time of payment, Respondent shall send notices of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to each of the following:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

James Heenehan
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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. Accordingly, Respondent's failure to make timely payment as specified in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
16. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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).
17. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
18. A late payment penalty charge of six percent per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
19. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

VI. CERTIFICATION OF COMPLIANCE

20. Respondent certifies to Complainant, upon investigation, to the best of her knowledge and belief, that Respondent currently 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 the Complaint and this Consent Agreement.

VII. RESERVATION OF RIGHTS

21. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in the Complaint. 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 regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VIII. PARTIES BOUND

22. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's successors, agents and assigns.

IX. FULL AND FINAL SATISFACTION

23. The settlement set forth herein shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the Complaint. 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.

24. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis is based upon information submitted to Complainant by Respondent, as listed on Attachment A to this Consent Agreement. Respondent, and its undersigned representative by such representative's signature to this Consent Agreement, certifies that the information submitted to EPA regarding Respondent's ability to pay is accurate and not misleading.

25. Respondent is aware that the submission of false or misleading information to the United States government may subject them to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief against Respondent if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law or in the information set forth in Attachment A to this Consent Agreement are false or, in any material respect, inaccurate.

X. OTHER APPLICABLE LAWS

26. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

XI. ENTIRE AGREEMENT

27. 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.

XII. AUTHORITY TO BIND THE PARTIES

28. The person signing this Consent Agreement on behalf of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind such Respondent hereto.

XIII. EFFECTIVE DATE

29. 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 and the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

For Respondent:

Date: 3-21-11

By: Daniel R. Mosley

(print name and title of person signing)

DANIEL R. MOSLEY
PRESIDENT, HARMONY HOMES, INC.

For Complainant:

Date: 3/22/11

By: James Heenehan
James Heenehan
Sr. Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 3/28/11

By: Lawrence S. Naylor
for Abraham Ferdas, Director
Land and Chemicals Division

Attachment A

Documents Submitted by Respondent to Support Respondent's Ability-to-Pay Penalty Mitigation Positions

1. 2007 Harmony Homes, Inc. federal tax return*;
2. 2008 Harmony Homes, Inc. federal tax return*;
3. 2009 Harmony Homes, Inc. federal tax return*;
4. Bank Records from June 1, 2010 to December 31, 2010 for Harmony Homes, Inc.;
5. Financial Statement: Corporations, Business or other Organizations Ability to Pay Form for Harmony Homes signed by Daniel R. Mosley, President and submitted to EPA under a July 7, 2010 letter by S. Rod Archiardo, Harmony Homes' attorney at that time;
6. A January 13, 2011 email to James Heenehan (EPA) from Michele Mosley, niece to Daniel Mosley, President of Harmony Homes, Inc., and representing Harmony Homes, Inc. during ADR after its attorney, Rod Archiardo, resigned on January 1, 2011, noting that Daniel Mosley is the President and sole owner of Harmony Homes and is in the process of filing for personal bankruptcy;
7. A February 10, 2011 email from James Heenehan (EPA) to Michele Mosley, asking for updated information on 15 properties listed as being owned by Harmony Homes, Inc. on its 2009 tax returns. Mr. Heenehan requested Harmony Homes to supply the accrued depreciation and mortgage sale balance on properties it still owns or the date and sale price of properties it no longer owns*;
8. A February 23, 2011 letter to James Heenehan (EPA) from Michele Mosley listing 10 properties, four of which show "Loans" and Balances for Harmony Homes, Inc., G&M-Realty Broker Price Opinions dated February 16, 2011 for all 10 properties, and Settlement Statements for 5 properties sold by Harmony Homes, Inc.);*
9. A February 28, 2011 email from James Heenehan (EPA) to Michele Mosley asking for certain additional information from Harmony Homes including a balance sheet for the 2009 Harmony Homes, Inc. federal tax return and the status of 3 properties listed in the 2009 tax returns which were not addressed in the information supplied in the February 23, 2011 correspondence*;
10. A March 1, 2011 email from Michele Mosley to James Heenehan (EPA) enclosing the 2009 balance sheet for Harmony Homes, Inc.;
11. A March 1, 2011 email from Michele Mosey to James Heenehan (EPA) indicating that the three properties noted in Mr. Heenehan's February 28, 2011 email were never owned by Harmony Homes, Inc. and had been listed on the tax returns in error.*

*Submissions by Harmony Homes, Inc., on February 23, 2011 and March 1, 2011 corrected certain mistakes in the Harmony Homes, Inc., tax returns, concerning Harmony Homes, Inc.'s ownership of certain properties.

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TSCA-03-2010-0403

RESPONDENT.

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SECTION 16(a) OF THE
TOXIC SUBSTANCES
CONTROL ACT ("TSCA"),
15 U.S.C. § 2615(a).**

TARGET HOUSING.

FINAL ORDER

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

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 of the parties to 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 One Thousand Dollars (\$1,000.00), and comply with the terms and conditions of the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date:

3/29/11

By:

Renée Sarajian

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