



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**FACSIMILE TRANSMISSION &
POUCH MAIL**

January 26, 2006

The Honorable Barbara A. Gunning (via pouch-mail)
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, DC 20460 - 2001

Re: Consent Agreement and Final Order
In the Matter of *John Paul Sopensky*
Docket No. : TSCA-03-2008-0433

Dear Judge Gunning:

Enclosed please find a true and correct copy of Consent Agreement and Final Order the original of which was filed today with the Regional Hearing Clerk, EPA, Region III, in settlement of the above referenced matter.

Should you have any questions or require further information, please contact me at (215) 814-2681.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis F. Ramalho".


Louis F. Ramalho
Sr. Assistant Regional Counsel

cc: Regional Hearing Clerk
EPA, Region III


John Paul Sopensky

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: In the Matter of: John Paul Sopensky d/b/a
Sopensky Properties
EPA Docket No. TSCA-03-2008-0433
Consent Agreement and Final Order

FROM: William C. Early 
Regional Counsel (3RC00)

and

Abraham Ferdas, Director 
Land & Chemicals Division (3LC00)

TO: William T. Wisniewski
Acting Regional Administrator

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This Consent Agreement and Final Order (“CAFO”) has been negotiated in settlement of certain violations by John Paul Sopensky, individually (“Respondent”), doing business as Sopensky Properties in Harrisburg, Pennsylvania, of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4852d *et seq.* (“RLBPHRA”), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689. Respondent was the “owner” and/or “lessor”, as these terms are defined at 40 C.F.R. § 745.103, of pre-1978 residential rental property (“Target Housing”) during all times relevant to the alleged violations addressed in the Complaint filed against the Respondent on September 25, 2008. Please refer to the Complaint for further details concerning the alleged violations.

Under the terms of the CAFO, Respondent will pay a civil penalty in the amount of \$3,380.00, and perform a Supplemental Environmental Project (“SEP”) in the amount of \$30,416.00 in accordance with the terms and conditions of the CAFO.

The proposed settlement is based upon consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requiring EPA to consider the nature, circumstances, extent, and gravity of the violations, the violator’s ability to pay, ability to continue in business, history of prior violations, degree of culpability and other factors as justice may require, and in accordance with EPA’s February 2000 *Section 1018 Disclosure Rule Enforcement Response Policy*. In addition, the proposed settlement also takes into consideration *EPA’s Supplemental Environmental Projects In*

Administrative Enforcement Matters Involving Section 1018 Lead-Based Paint Cases, dated November 23, 2004.

We recommend that you sign the attached Final Order and return it to the Office of Regional Counsel for further processing.

Attachment

cc: John Paul Sopensky

145 3rd Street :
 Enola, PA 17025 :
 :
 905-3 Clifton Heights Road :
 Hummelstown, PA 17036 :
 :
 119 South Chestnut Street :
 Mechanicsburg, PA 17103 :
 :
 875-1 Clifton Heights Road :
 Hummelstown, PA 17036 :
 :
 885-3 Clifton Heights Road :
 Hummelstown, PA 17036 :
 :
 Target Housing. :

CONSENT AGREEMENT
Preliminary Statement

1. The Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“Complainant”) and John Paul Sopensky (“Respondent”), wishing to settle EPA’s claims for civil penalties arising from the violations alleged in the Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) issued on September 25, 2008, have consented to the entry of this Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“*Consolidated Rules*”), 40 C.F.R. Part 22 including, but not limited to, 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement (“CA”) and the accompanying Final Order (“FO”), settle violations by Respondent of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* (“RLBPHRA”), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in the Complaint and herein.
3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in the Complaint or herein, except as provided in Paragraph 2, above.
4. For the purposes of this proceeding only, Respondent hereby expressly waives his right to a hearing on any issue of law or fact set forth in the Complaint or herein and any right to appeal the accompanying FO.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
6. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
7. Respondent shall bear his own costs and attorney's fees, if any.
8. The provisions of this CAFO shall be binding upon Respondent.
9. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
10. Respondent certifies that he is currently in full compliance with RLBPHRA, 42 U.S.C. §§ 4851 *et seq.*, and the Disclosure Rule codified at 40 C.F.R. Part 745.
11. Nothing in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

Notice of Action to the Commonwealth of Pennsylvania

12. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO.

Civil Penalty

13. Respondent agrees to pay the amount of Three Thousand Three Hundred Eighty Dollars (\$3,380.00) and to perform a Supplemental Environmental Project, referred to hereinafter as the "Lead-Based Paint Abatement Project", as described herein, in satisfaction of all civil claims for penalties which Complainant may have 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. 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. In the event Respondent fails to perform the Lead-Based Paint Abatement Project required by this CAFO, Respondent agrees to pay additional penalties as set forth in Paragraph 41 of this CAFO.
14. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs 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.
15. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the

Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).

16. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
17. A late payment penalty of six percent per year will be assessed monthly on any portion of a 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 a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
18. The aforesaid settlement amount is based upon Complainant's consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which include the nature, circumstances, extent, and gravity of the violations and the violator's ability to pay, ability to continue in business, history of prior violations, and degree of culpability, and other matters as justice may require.
19. Respondent shall pay the civil penalty specified in paragraph 13, above, by electronic funds transfer ("EFT"), as described below, or by sending a cashier's check or certified check, made payable to the order of "**United States Treasury.**"

- a. Checks sent by regular US Postal Service mail delivery must be addressed to:

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

Contact: Natalie Pearson, 314-418-4087

- b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. EPA, Fines and Penalties
U.S. Bank
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: Natalie Pearson, 314-418-4087

- c. Any EFT shall be transmitted to:

Wire Transfer

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Account 310006
CTX Format Transaction Code 22 - checking

Environmental Protection Agency
808 17th Street, NW
Washington, DC 20074

Contact for ACH: Jessie White (301)887-6548

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open the form and complete required fields.

20. All payments by Respondent shall reference his name and address and the Docket Number of this case (TSCA-03-2008-0433). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00)
EPA Region III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Louis F. Ramalho (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Lead-Based Paint Abatement Project

21. **RESPONDENT SHALL ENSURE THAT ALL WORK PERFORMED PURSUANT TO THE LEAD-BASED PAINT ABATEMENT PROJECT IS PERFORMED BY PERSONS AUTHORIZED TO PERFORM SUCH WORK, AND IN CONFORMANCE WITH THE STANDARDS SET FORTH IN 40 C.F.R. PART 745, 34 PA. CODE CHAPTER 203, AND ANY OTHER APPLICABLE STATE AND LOCAL LAWS OR REGULATIONS.**

22. As a condition of this settlement, Respondent agrees to solicit bids from and enter into appropriate contracts with independent third parties to perform the following Lead-Based Paint Abatement Project tasks (“Lead-Based Paint Abatement Tasks”) at Respondent’s Target Housing, as listed in the caption of this CAFO, in accordance with the schedule, standards, conditions, and reporting milestones as set forth more fully below:
 - a. Perform a lead “Risk Assessment,” as defined in 40 C.F.R. § 745.223, at all of the Target Housing subject to the Complaint and this CA;

 - b. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by replacing as many as possible of those windows (including sashes, window heads, jambs, sills or stools and troughs) identified by the risk assessment as containing lead-based paint with windows that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;

 - c. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible of the door frames identified by the risk assessment as containing lead-based paint or by replacing as many as possible of such door frames with door frames that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;

 - d. Perform lead “Abatement,” as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible of any other components of the Target Housing identified by the risk assessment as

containing lead-based paint by replacing as many as possible of such other components with other components that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;

- e. Prepare and submit to EPA an occupant protection plan developed in accordance with 40 CFR Part 745.227(e)(5) and the *HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing*, U.S. Department of Housing and Urban Development (1997 Revision);
 - f. Implement the "Post-Abatement Clearance Procedures" set forth at 40 C.F.R. Section 745.227(e)(8) to verify that the Lead-Based Abatement Tasks set forth in Paragraph 22(b) - (d), above, have been completed fully (including any sampling and clean-up of any lead-contaminated dust or debris generated by the abatement work) and that, subject to the dollar limit set forth in Paragraph 24, below, the windows of the Target Housing have been replaced with windows that do not contain lead-based paint and, if applicable, the door frames do not contain lead-based paint;
 - g. Complete an "Abatement Report" and, if necessary, perform "Post-Abatement Work" and complete a "Post-Abatement Report" as set forth in 40 C.F.R. § 745.227(e)(10) documenting the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing;
 - h. Complete a "Project Completion Report" in accordance with Paragraph 31 of this CA; and
 - i. Send written notification to the Pennsylvania Department of Labor and Industry identifying the projected start and completion date of the Lead-Based Paint Abatement Project as required by the Pennsylvania Department of Labor and Industry pursuant to 34 Pa. Code, Chapter 203, Section 10.
23. For the purposes of this CA, lead-based paint is defined as paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight as referenced in the definition for "Lead-based paint" in 40 C.F.R. § 745.223.
24. Respondent agrees to expend a minimum of Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00) to complete the performance of the Lead-Based Paint Abatement Project in accordance with Paragraphs 21-34 of this CA ("Lead-Based Paint Abatement Project Cost"). Paragraph 30 of this CA contains a complete list of activities the costs of Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00) which may be applied to the Lead-Based Paint Abatement Project Cost. If Respondent does not fully complete such tasks in accordance with Paragraphs 21-34 of this CA or, in the alternative, has not spent at least Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00) on the Lead-Based

Paint Abatement Project as determined by EPA in accordance with Paragraphs 32 through 34 of this CA, Respondent shall pay additional penalties in accordance with Paragraph 41, below.

25. Except as provided in Paragraph 30 of this CA, Respondent is under no obligation to continue with Lead-Based Paint Abatement Tasks once Respondent has demonstrated to EPA's satisfaction, in conformance with Paragraphs 32 through 34, that Respondent has expended the sum of Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00) on the Lead-Based Paint Abatement Project, including any projected post-abatement work, as set forth in Paragraphs 21 through 34.
26. Respondent shall provide a copy of this CA to the tenants of any Target Housing which is the subject of the Lead-Based Paint Abatement Project at least ten (10) days prior to the commencement of any work required to implement the Lead-Based Paint Abatement Project.
27. Respondent shall ensure that no child under the age of six and no pregnant woman is present in any Target Housing subject to the Lead-Based Paint Abatement Project during any work required to implement such Project and that no persons other than those performing the work are present in such Target Housing while such work is being performed.
28. Respondent shall pay all reasonable expenses associated with temporary relocation of tenants in accordance with Paragraph 27, above, in the event that such tenants must evacuate the Target Housing for a period of 24 hours or more to allow Respondent to perform any of the Lead-Based Paint Abatement Tasks. Respondent may apply any reasonable expenses spent on providing the tenants with alternative housing towards the Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00) Lead-Based Paint Abatement Project Cost referenced in Paragraph 24.
29. Respondent shall solicit bids for, provide funds for, and enter into such contracts as are necessary to ensure completion of the following Lead-Based Paint Abatement Tasks in accordance with the schedule set forth below:
 - a. "Days" as used herein shall mean calendar days unless specified otherwise;
 - b. Within thirty (30) days of the effective date of this CA, Respondent shall enter into a contract with an independent third party to perform a Risk Assessment at the Target Housing as described in Paragraph 22.a., above;
 - c. Within one hundred twenty (120) days of the effective date of this CAFO, Respondent shall, in accordance with the requirements of Paragraph 21 of this CA, become certified to perform the Lead-Based Paint Abatement Tasks set forth above in Paragraph 22.b. - d. for each Target Housing

identified by the risk assessment as containing lead-based paint, or enter into a contract with an independent third party other than the third party that performed the Risk Assessment pursuant to Paragraph 22.(a), above, to perform the Lead-Based Paint Abatement Tasks set forth above in Paragraph 22.b. - d., subject to the limitations described in Paragraph 25, above.

- d. Within five (5) days after entering into a contract to perform any Lead-Based Paint Abatement Tasks, Respondent shall send to the EPA contacts identified in Paragraph 43, below, a copy of such contract. In the event Respondent elects to perform the Lead-Based Abatement Tasks in accordance with Paragraph 29.c., above, Respondent shall submit Respondent's lead-based paint certification(s) to the EPA contacts identified in Paragraph 43, below, within (5) days upon receipt of such certifications to perform the Lead-Based Paint Abatement Project.
- e. Respondent shall submit written notification to the EPA contacts identified in Paragraph 43, below, within five (5) days of the completion of the Lead-Based Paint Abatement Tasks.
- f. Within thirty (30) days after the completion of the Lead-Based Paint Abatement Tasks, Respondent shall enter into a contract with an independent third party to implement the Post-Abatement Clearance Procedures set forth at 40 C.F.R. § 745.227(e)(8) to verify:
 - i. that all sampling and clean-up of lead-contaminated dust and debris generated during the Lead-Based Paint Abatement Tasks have been completed; and
 - ii. that dust levels for floor, interior window sill, and window trough are below 40, 250, and 400 ug/ft² thresholds, respectively.
- g. Within thirty (30) days after the completion of the Lead-Based Paint Abatement Tasks, Respondent shall enter into a contract with an independent third party to complete an "Abatement Report" as set forth in 40 C.F.R. § 745.227(e)(10) (and, if necessary, a "Post-Abatement Report" as referenced below in Paragraph 29.n.) describing the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing.
- h. The Post-Abatement Clearance Procedures and the Abatement Report (and, if necessary, Post-Abatement Report) must be completed by persons who are unrelated to and completely independent from the individuals

and/or business entities who perform any Lead-Based Paint Abatement Tasks.

- i. Within five (5) days after entering into a contract(s) with an independent third party to perform the Post-Abatement Clearance Procedures and/or prepare an Abatement Report (and, if necessary, Post-Abatement Report), Respondent shall send to the EPA contacts identified in Paragraph 43, below, a copy of such contract(s) for the Post-Abatement Clearance Procedures and Abatement Report (and, if necessary, Post-Abatement Report).
- j. The Post-Abatement Clearance Procedures for the Lead-Based Paint Abatement Project must be completed within sixty (60) days after the completion of the Lead-Based Paint Abatement Tasks.
- k. The Abatement Report shall be completed within thirty (30) days after the completion of the Post-Abatement Clearance Procedure tasks.
- l. Within five (5) days after receiving a copy of the Abatement Report, Respondent shall send a copy of that report to the EPA contacts identified in Paragraph 43, below.
- m. If the Abatement Report indicates that any window or door frame that Respondent attempted to replace or from which Respondent attempted to remove the lead-based paint pursuant to this CA still contains lead-based paint, Respondent shall be responsible for eliminating the lead-based paint in conformance with the requirements set forth in 40 C.F.R. Part 745, Subpart L (including any applicable post-abatement clearance procedures), within fifteen (15) days of receiving the Abatement Report. Respondent shall submit to the EPA contacts identified in Paragraph 43, below, a "Post-Abatement Report" prepared in accordance with 40 C.F.R. § 745.227(e)(10) documenting and describing the performance of such Post-Abatement Work within fifteen (15) days after completing such Post-Abatement Work.
- n. Before initiating any Lead-Based Paint Abatement Tasks described herein, Respondent shall obtain, at his own expense, all permits, licenses, and other forms of approval or authorization necessary to conduct such Lead-Based Paint Abatement Tasks from all relevant federal, state, and local agencies or departments.
- o. Within three sixty hundred (360) days of the effective date of this CA, Respondent shall have completed the Lead-Based Paint Abatement Project in accordance with the terms of this CA.

30. Respondent may apply any funds spent on the Risk Assessment, Lead-Based Paint Abatement Tasks, Post-Abatement Clearance Procedures, Abatement Report, Post-Abatement Report, Project Completion Report, and any other task which EPA determines in writing is necessary for the implementation of the Lead-Based Paint Abatement Project, towards the Thirty Thousand Four Hundred Sixteen Dollars (\$30,416) Lead-Based Paint Abatement Project Cost referenced in Paragraph 24. Such costs may also include funds reasonably expended by Respondent on providing tenants of the Target Housing with alternative housing as set forth in Paragraph 28 of the CA. ***However, regardless of whether Respondent has met or exceeded the minimum dollar expenditure set forth in Paragraph 24, Respondent must complete the Post-Abatement Clearance Procedures, Abatement Report, Post-Abatement Work, Post-Abatement Report, and Project Completion Report as required by Paragraphs 29 and 31 .***

Project Completion Report

31. Within sixty (60) days of Respondent's receipt of the Abatement Report or the Post-Abatement Report, if applicable, but not later than three-hundred (300) days after the effective date of this CA, Respondent shall submit to EPA a "Project Completion Report" for the Lead-Based Paint Abatement Project. The Project Completion Report shall contain the following:
- a. A detailed description of the Lead-Based Paint Abatement Project as implemented;
 - b. A description of any problems encountered in implementing the Lead-Based Paint Abatement Project and any solutions thereto;
 - c. A report (certified in accordance with the Certification Provision of Paragraph 42, below) of the itemized costs of work performed in implementing the Lead-Based Paint Abatement Project documented by copies of all invoices, contracts, canceled checks, and payment receipts relevant to the implementation of the Lead-Based Paint Abatement Project;
 - d. A certification by Respondent, in accordance with the Certification Provision of Paragraph 42, that the Lead-Based Paint Abatement Project has been implemented in accordance with the terms of this CA.

EPA Review of Project Completion Report

32. Following receipt of the Project Completion Report, EPA will do one of the following:
- a. If EPA determines that the Lead-Based Paint Abatement Project was conducted in accordance with the terms of this CA, EPA will issue a

written notification to Respondent accepting the Project Completion Report.

- b. If EPA determines that the Lead-Based Paint Abatement Project was not conducted in accordance with the terms of this CA within the time provided for the completion of the Lead-Based Paint Abatement Project set forth in Paragraphs 21 through 34, EPA will issue a written notification to Respondent rejecting the Project Completion Report, providing EPA's reasons therefor, identifying the deficiencies in the Project Completion Report and granting Respondent a reasonable time from receipt of such notice within which to correct any deficiencies. In the event Respondent fails to correct the identified deficiencies EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Paragraph 41 of this CA.
33. If EPA issues a written notice of disapproval rejecting a Project Completion Report, EPA shall grant Respondent the opportunity to object in writing to such notification within seven (7) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on the matter in dispute. If agreement cannot be reached on any such matter within such thirty (30) day period, EPA shall provide a written statement of its decision and the rationale therefor to Respondent, which decision shall be final and binding upon Respondent.
 34. In the event EPA determines after the expiration of the 30-day dispute resolution period that the Lead-Based Paint Abatement Project has not been completed as specified herein or has issued a written notice of disapproval for which a timely objection has not been filed by Respondent, additional penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 41 of this CA. The submission of an unacceptable Project Completion Report shall be the equivalent of the failure to submit a timely Project Completion Report for purposes of the additional penalties set forth in Paragraph 41 of this CA, except that any additional penalties pursuant to such paragraph shall not run during the pendency of the procedure set forth in Paragraph 33, and shall instead run from the date on which Respondent receives EPA's final written statement of its decision pursuant to this paragraph.

Satisfaction of Settlement Conditions

35. A determination of compliance with the conditions set forth herein will be based upon, among other things, records, reports, and other documents submitted by Respondent to EPA and any inspections that EPA may perform.
36. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall issue a "Letter of Remittance" upon satisfaction of the Lead-Based Paint

Abatement Project conditions which shall state that Respondent has performed fully the Lead-Based Paint Abatement Project in accordance with this CA and paid all penalty amounts due pursuant to the terms of this CA.

Force Majeure

37. If any event occurs which causes or may cause delays in the completion of any of the deadlines set forth in Paragraphs 21 through 34 of this CA, Respondent shall notify EPA in writing within seven (7) days of when Respondent knew or should have known of the force majeure event, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render Paragraphs 39 through 40, below, void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of time to fulfill any obligation under this CA affected by such incident.
38. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CA has been or will be caused by circumstances entirely beyond the control of Respondent which could not or cannot be overcome by due diligence (*i.e.*, a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate in writing to such extension of time.
39. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA has been or will be caused by a force majeure, EPA, in its sole discretion, will notify Respondent in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondent's obligations under this CA and Respondent may be subject to the payment of additional penalties for such delays as described in Paragraph 41, below.
40. The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased costs or expenses associated with the implementation of actions required by this CA shall not, in any event, be a basis for changes in this CA or extensions of time, hereunder.

Failure to Satisfactorily Complete the Lead-Based Paint Abatement Project/ Delay in Performance

41. In the event that Respondent fails to comply with any of the terms or provisions of this CA relating to the performance of the Lead-Based Paint Abatement Project described herein, or if the actual expenditures for the Lead-Based Paint Abatement Project do not

equal or exceed Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00), Respondent shall be liable for additional penalties, as provided below:

- a. Except as provided in Paragraph 41.b., below, if the Lead-Based Paint Abatement Project has not been satisfactorily completed pursuant to Paragraphs 21 through 34, above, Respondent shall pay an additional penalty up to Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00).
- b. If the Lead-Based Paint Abatement Project has not been satisfactorily completed, but Respondent has:
 - i. Made timely and good faith efforts to complete the project; and
 - ii. Certified, with supporting documentation, that at least 90% of the amount of money which was required to be spent on the Lead-Based Paint Abatement Project was expended on the Lead-Based Paint Abatement Project, Respondent shall not pay any additional penalty.
- c. If the Lead-Based Paint Abatement Project is completed satisfactorily and Respondent certifies, with supporting documentation, that at least 90% of the Lead-Based Paint Abatement Project Cost was expended on the Lead-Based Paint Abatement Project, Respondent shall not pay any additional penalty.
- d. If the Lead-Based Paint Abatement Project is completed satisfactorily, but Respondent has spent less than 90% of the Lead-Based Paint Abatement Project Cost which was required to have been spent on the Lead-Based Paint Abatement Project, Respondent shall pay an additional penalty calculated as follows:

\$30,416 - ("minus") the Actual Lead-Based Paint Abatement Project Expenditures = ("equals") Additional Penalty.
- e. If Respondent fails to complete the Lead-Based Paint Abatement Project tasks within the deadlines provided in Paragraphs 21 through 34, above, Respondent shall pay an additional penalty of One-Hundred Dollars (\$100) for each day beyond the deadline established for any such task.
- f. Notwithstanding the foregoing, in no event shall the total of actual Lead-Based Paint Abatement Project expenditures plus additional penalties under this section exceed Thirty Thousand Four Hundred Sixteen Dollars (\$30,416.00).

- g. In exercising its discretion or making determinations under this CA, EPA shall be reasonable considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CA, including the determinations as to whether the Lead-Based Paint Abatement Project has been completed satisfactorily, shall be at the sole discretion of EPA. Notwithstanding any other provision of this CA, no action or decision by EPA pursuant to this CA shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this CA. Except as provided in Paragraph 34, above, additional penalties as set forth herein shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity.
- h. Additional penalties shall become due and payable immediately upon Respondent's receipt of a written demand by EPA for such penalties. The method of payment and the assessment of interest, administrative cost and late payment of penalties in connection with the payment of such additional penalties shall be in accordance with the requirements for the payment of a civil penalty addressed in this CA.

Certification

- 42. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CA which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CA shall be certified by Respondent. Such certification shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted to EPA under this certification. I believe that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information to EPA including the possibility of fine and/or imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Distribution of Reports

43. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CA shall be sent via overnight mail, or by hand as follows:

If to EPA:

Annie Skidmore (3LC61)
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029, and

Louis F. Ramalho, Sr. Assistant Regional Counsel (3RC30)
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

If to Respondent:

John Paul Sopensky
5041 Lancaster Street
Harrisburg, PA 17111

Other Applicable Laws

44. Nothing in this CA shall relieve Respondent of any duties otherwise imposed upon them by applicable federal, state or local laws and/or regulations.

No Releases

45. Nothing in this CA shall constitute or be construed as a release of Respondent from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CA for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazard at the Target Housing.

Liability of Complainant

46. Complainant shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent or his employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Lead-Based Paint Abatement Project, nor shall the Complainant be held out as a party to any contract entered into by Respondent in carrying out the terms of this CA.

Indemnification and Hold Harmless

47. Respondent agrees to indemnify and hold harmless Complainant, its agents, employees, and authorized representatives from any and all causes of action arising from any acts or omissions of Respondent or his contractors in carrying out the terms of this CA.

No Reimbursements

48. Respondent certifies that he has not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses he incurs to fulfill the terms of this CA.
49. Respondent specifically agrees, for federal income tax purposes, that he will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing Lead-Based Paint Abatement Project.

Distribution of CA

50. Respondent shall provide a copy of the CA to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by Respondent to conduct any portion of the Lead-Based Paint Abatement Project required to be conducted pursuant to this CA.

Public Statements by Respondent

51. Any public statement, oral or written, in print, film, or other media, made by Respondent in reference to the above Lead-Based Paint Abatement Project shall include language indicating that this project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency for alleged violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations.

Access to Information

52. In addition to the information and documents otherwise required by this CA, Respondent shall provided to Complainant, upon written request, any and all information and/or documents in his possession, custody or control which relate to the Lead-Based Paint Abatement Project described herein including, but not limited to, operational logs, copies of waste manifests, the identity of any transporter of wastes generated by the Lead-Based Paint Abatement Project, the identity of any contractors, subcontractors and supervisory personnel used, and information and documents concerning Respondent's compliance with state and local requirements. Nothing in this CA shall be interpreted as limiting the inspection and information-gathering authority of Complainant under any law or regulation.

53. Complainant and its employees and authorized representatives shall have the authority to enter and freely move about the location where any Lead-Based Paint Abatement Project is required to be performed pursuant to this CA, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CA; reviewing the progress of the Respondent in carrying out the terms of this CA; conducting such sampling, monitoring, or other tests as Complainant deems necessary to ensure compliance with the CA; and verifying the data submitted to Complainant by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the CA. Complainant may use a camera, recording, or other equipment to record its observations during such access.

Claim of Confidentiality

54. Respondent may make a claim of business confidentiality for any information provided to Complainant pursuant to this CA in the manner described in 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. Section 2.204(c)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by Complainant only in accordance with procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to Complainant, the submitted information may be made available to the public by Complainant without further notice to Respondent.

Reservation of Rights

55. This CAFO shall resolve only Respondent's liability for federal civil penalties for the specific violations alleged in this CA. 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. This CA is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law. In addition, Complainant reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CA, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

56. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for the violations alleged in this CAFO.

Other Applicable Laws

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

Effective Date

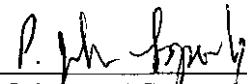
58. The effective date of this Consent Agreement and the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III or his designee, is filed with the Regional Hearing Clerk.

Entire Agreement

59. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.


Respondent:

Date: 12/31/08

By: 
John Paul Sopensky

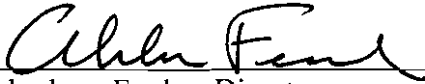
For the United States Environmental Protection Agency:

Date: 01/07/09

By: 
Louis F. Ramalho
Sr. Assistant Regional Counsel

I recommend that the Regional Administrator, or his designee, issue the Final Order attached hereto.


Date: 1/22/09

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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 Three Thousand Three Hundred Eighty Dollars (\$3,380.00), 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: 1/22/09

BY: 
William T. Wisniewski
Acting Regional Administrator
United States Environmental Protection Agency
Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. TSCA-03-2008-0433, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following:

John Sopensky (via FedEx)
5041 Lancaster Street
Harrisburg, PA 17111

The Honorable Barbara A. Gunning (via pouch-mail)
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, DC 20460 - 2001

2009 JUN 26 11:19

1/25/09
Date



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029