



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 21 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4753

James E. Twomey
920 61st Street
Kenosha, Wisconsin 53143

Joint Civil Complaint and Consent Agreement and Final Order, Docket No. TSCA-05-2007-0004

Dear Mr. Twomey:

I have enclosed a copy of an original fully executed Joint Civil Complaint and Consent Agreement and Final Order in resolution of the above case. This document was filed on February 21, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$962 is to be paid in the manner prescribed in paragraphs 39, 40 and 41. Please be certain that the number **BD 2750747X003** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 23, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
John Tielsch, ORC/C-14J (w/Encl.)
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

JAMES E. TWOMEY)

Respondent.)

Docket No. **TSCA-05-2007-0004**

REGION 5
2007 SEP 21 AM 10:35

JOINT CIVIL COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency, (U.S. EPA or Agency), Region 5, and Respondent James E. Twomey, wishing to settle all matters pertaining to this case and having consented to the entry of this Joint Civil Complaint and Consent Agreement and Final Order (CAFO); NOW THEREFORE, before the taking of any testimony, without the adjudication of any issues of law or fact herein, the Parties consent to the entry of and agree to comply with the terms of the CAFO.

I. AUTHORITY AND JURISDICTION

1. This is a civil administrative action issued under the authority vested in the Administrator of the United States Environmental Protection Agency by Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. The Respondent is James E. Twomey, located at 920 61st Street, Kenosha, Wisconsin 53143.
4. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b), provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

II. STATUTORY AND REGULATORY REQUIREMENTS

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

6. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. 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”).

7. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

8. 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.

9. 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.

10. 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.

11. 40 C.F.R. § 745.113(b)(1) of the Disclosure Rule requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a lead warning statement before a lessee is obligated under the contract to lease target housing.

12. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

13. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

14. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

15. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.

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

III. STIPULATED FACTS

17. Between at least January 24, 2002 to February 28, 2003, Respondent owned residential rental property at 920 61st Street, Kenosha Wisconsin.

18. The residential rental property referenced in paragraph 17, above, was constructed prior to 1978.

19. The residential rental property and each unit within the residential rental property referenced in paragraph 17, above, is “target housing” as defined in 40 C.F.R. § 745.103.

20. On the following dates, Respondent entered into the following five written lease agreements (Contracts) with individuals for the lease of units in the residential rental property referenced in paragraph 17, above:

Address	Unit	Date of Lease
920 61 st Street, Kenosha, Wisconsin	201	01/24/2002
“	201	02/07/2002
“	1 st Floor North	02/17/2003
“	2 nd Floor North	02/14/2003
“	3 rd Floor North	02/28/2003

21. Each of the five Contracts, referenced in the table in paragraph 20, above, covered a term of occupancy greater than 100-days.

22. Between January 24, 2002 and February 28, 2003, Respondent, as the owner of the residential rental property, offered for lease units in the property, and individuals entered into agreements to lease those units, on the dates listed in paragraph 20, above.

23. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, since he has offered the target housing, referenced in the table in paragraph 20, above, for lease.

24. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the residential rental property, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

IV. ALLEGED VIOLATIONS

25. For the residential property and contracts referenced in paragraph 20, U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the unit or as an attachment to the contract, a lead warning statement before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(1).

26. For the residential property and contracts referenced in paragraph 20, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(2).

27. For the residential property and contracts referenced in paragraph 20, U.S. EPA alleges that Respondent failed to include as an attachment or within each contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such list exists, before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(3).

28. For the residential property and contracts referenced in paragraph 20, U.S. EPA alleges that Respondent failed to include in each contract for lease, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(4).

29. For the residential property and contracts referenced in paragraph 20, U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessees certifying to the accuracy of their statements

and the dates of such signature before the lessees were obligated under the contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(6).

V. PENALTY CALCULATION

30. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, requires U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation occurring or continuing on or after January 31, 1997 through March 14, 2004; and \$32,500 per day for violations occurring on or after March 15, 2004. See 40 C.F.R. § 19 and 69 Fed. Reg. 7126 (February 13, 2004).

31. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violators, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

32. In consideration of the cooperation displayed by the Respondent, the immediate efforts taken to comply with the Disclosure Rule, the manner in which the parties reached settlement in this matter, U.S. EPA agrees to mitigate the proposed penalty from \$13,750 to \$9,625.

33. In consideration of Respondent's agreement to perform the Window Replacement Project specified in paragraphs 45 to 54, below, U.S. EPA agrees to further mitigate the penalty of \$9,625 to \$962.

VI. OPPORTUNITY TO REQUEST A HEARING

34. Upon affixing their signatures to this agreement, Respondent waives all rights to request a judicial or administrative hearing under the provisions of the Administrative

Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing, and their right to appellate review of the final order. This waiver includes any right to contest the appropriateness of the amount of the proposed and final penalty.

VII. TERMS OF SETTLEMENT

35. Respondent admits the jurisdictional allegations contained in this Consent Agreement and Final Order and neither admits nor denies the factual allegations contained in this CAFO.

36. Respondent waives his right to a hearing on the allegations in this CAFO, and his right to appeal. 40 C.F.R. § 22.18.

37. Respondent certifies that upon the effective date of this CAFO, he is complying fully with 40 C.F.R. Part 745, Subpart F, and intends to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

38. The parties consent to the terms of this CAFO.

39. Respondent shall pay the \$962 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

40. Respondent shall send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

41. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent shall write the case docket number and the BD number on the face of the

check. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

42. This civil penalty is not deductible for Federal tax purposes.

43. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraph 54 and 56, below, U.S. EPA may bring an action 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. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

44. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

WINDOW REPLACEMENT PROJECT

45. Respondent must complete a Window Replacement Project designed to protect tenants from potential lead-based paint hazards by replacing windows in the rental property at 920 61st Street, Kenosha, Wisconsin.

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

47. Respondent must perform standard lead clearance testing upon completion of the Window Replacement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws, in the property listed in paragraph 45, above. The individual (Company) executing the standard lead clearance sampling must not be paid or employed or, otherwise compensated by the individuals conducting the Window Replacement Project.

48. Respondent must spend at least \$8,663 (\$9,625 less \$962) to complete the Window Replacement Project.

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

50. U.S. EPA may inspect the property at any time to monitor Respondent's compliance with this CAFO's requirements. Any access to the buildings or units therein will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

51. Respondent must submit a Window Replacement Project report and lead clearance sampling report upon completion of the Window Replacement Project for the property listed in

paragraph 45, above, within 4 months following entry of the CAFO. These reports must contain the following information:

- a. a description of the Window Replacement Project as completed at the property listed in paragraph 45, above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property listed in paragraph 45, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; including receipts for the cost of the lead based paint inspection conducted to identify the lead-based paint and/or lead-based paint hazards in the building;
- d. itemized costs of services used to complete the lead clearance sampling documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;
- e. provide documentation that the individuals who performed the Window Replacement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local laws and regulations;
- f. certification that Respondent has completed the Window Replacement Project and the lead clearance sampling in compliance with this CAFO; and
- g. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the Window Replacement Project.

52. Respondent must submit all notices and reports required by the CAFO by first class mail to Estrella Calvo, at the address in paragraph 41, above.

53. In each report that Respondent submits as provided by this CAFO, he or his authorized representative must certify that the report is true and complete by including the following statement signed by the Respondent:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false

information, including the possibility of fines and imprisonment for knowing violations.

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

- a. If Respondent does not complete the Window Replacement Project and lead clearance sampling according to this CAFO, Respondent must pay a stipulated penalty of \$8,663;
- b. If Respondent satisfactorily completes the Window Replacement Project and lead clearance sampling according to this CAFO, but spends less than \$8,663, Respondent must pay the difference between \$8,663 and the actual amount spent;
- c. If Respondent fails to ensure and document that lead clearance sampling work for each property listed in paragraph 45, above, is executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, Respondent shall pay a stipulated penalty of \$4,332;
- d. If Respondent fails to ensure and document that the Window Replacement Project complies with the requirements of paragraphs 45 to 48, above, Respondent shall pay a stipulated penalty of \$4,332; and
- e. If Respondent fails to submit timely the Window Replacement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 51, above, or if Respondent fails to satisfactorily address each requirement in the window replacement completion report paragraphs of the CAFO, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$8,663.

55. U.S. EPA's reasonable and good faith determination of whether Respondent satisfactorily completed the Window Replacement Project and lead clearance sampling and whether Respondent made good faith, timely efforts to complete the Window Replacement Project and lead clearance sampling will bind Respondent for the purposes of this CAFO.

56. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion.

Respondent will use the method of payment specified in paragraphs 39 through 41, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

57. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged.

58. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

59. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

60. The terms of the CAFO bind the Respondent and his assigns, and in the event of any conveyance of the subject property, the successors and assigns of said conveyance.

61. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party for whom he or she represents and to bind that party to its terms.

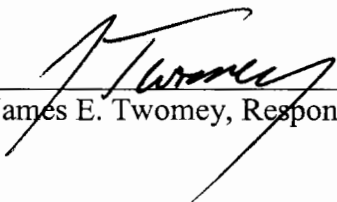
62. Each party agrees to bear its own costs and fees in this action.

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

**Consent Agreement and Final Order
In the Matter of: James E. Twomey**

Docket No. TSCA-05-2007-0004

Date: 2/2/07

By: 
James E. Twomey, Respondent

2007 FEB 21 AM 10:35
REGIONAL OFFICE
EPA

United States Environmental Protection Agency,
Complainant

Date: 2-12-07

By: Mardi Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch

Date: 2/15/07

By: Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

In the Matter of:
James E. Twomey

Docket No. TSCA-05-2007-0004

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 2/20/07

Mary A. Gade
Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

SEP 21 11 35 AM '07


CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving James E. Twomey, was filed on February 21, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0198 4753, a copy of the original to the Respondents:

James E. Twomey
920 61st Street
Kenosha, Wisconsin 53143

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John Tielsch, ORC/C-14J
Eric Volck, USEPA Cincinnati Finance/NWD

_____

Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0004**

2007 FEB 21 11:10:35
REGIONAL CLERK
EPA REGION 5