



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 8607

Mr. Robert Ullrich  
ARGU South, LLC  
N55 West 34781 Lake Drive  
Oconomowoc, Wisconsin 53066

Robert Ullrich and ARGU South, LLC. Docket No. TSCA-05-2011-0015

Dear Mr. Ullrich:

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.

Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondents ability to pay, Complainant determined that an appropriate civil penalty to settle this action is \$0.

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.)  
Steve Kaiser, Counsel for Complainant/C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
 )  
**Robert Ullrich and** )  
**ARGU South, LLC** )  
**Oconomowoc, Wisconsin** )  
 )  
**Respondents.** )  
\_\_\_\_\_ )

**Docket No. TSCA-05-2011-0015**  
**Proceeding to Assess a Civil**  
**Penalty Under Section 16(a) of the**  
**Toxic Substances Control Act,**  
**15 U.S.C. § 2615(a)**

**RECEIVED**

AUG 03 2011

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
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, U. S. Environmental Protection Agency, Region 5.
3. Respondents are Robert Ullrich, a sole proprietor doing business in the State of Wisconsin, and ARGU South, LLC, a limited liability company doing business in the State of Wisconsin, in which Robert Ullrich has an ownership interest.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
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 assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny 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 their 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, 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.

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, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

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, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

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, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after 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 September 16, 2006 and September 1, 2008, Respondents owned residential apartment buildings in Milwaukee, Wisconsin. ARGU South, LLC owned apartment

buildings at the following addresses in Milwaukee, Wisconsin: 1134 S. 21<sup>st</sup> Street, 1132 S. 21<sup>st</sup> Street, and 1411 S. Comstock Avenue. Robert Ullrich owned apartment buildings at the following addresses: 406 N. 34<sup>th</sup> Street, 226 N. 30<sup>th</sup> Street, 2406 W. Maple street, and 833 S. 21<sup>st</sup> Street. The apartment buildings owned by Ullrich and ARGU South, LLC are referred to herein as “Respondents’ properties”.

18. Respondents’ properties are “target housing” as defined in 40 C.F.R. § 745.103.

19. On the following dates, one of the Respondents entered into the following lease agreements (contracts) with individuals for the lease of apartment units within Respondents’ properties:

<b>Address</b>	<b>Apartment No.</b>	<b>Date of Lease</b>
1134 S. 21 <sup>st</sup> Street		April 1, 2008
1132 S. 21 <sup>st</sup> Street	Apartment A	January 28, 2008
1132 S. 21 <sup>st</sup> Street		May 1, 2008
1411 S. Comstock Avenue		May 1, 2008
406 N. 34 <sup>th</sup> Street	Unit 4	July 1, 2008
226 N. 30 <sup>th</sup> Street		September 1, 2007
226 N. 30 <sup>th</sup> Street		July 3, 2008
226 N. 30 <sup>th</sup> Street		September 1, 2008
2406 W. Maple Street		September 16, 2006
2406 W. Maple Street		December 2, 2007
833 S. 21 <sup>st</sup> Place	Apartment A	May 8, 2007
833 S. 21 <sup>st</sup> Street	Unit B	November 1, 2007

20. Each of the 12 contracts referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondents are each a “lessor,” as defined in 40 C.F.R. § 745.103, because they offered the target housing referred to in paragraph 19, above, for lease.

22. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 19, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

23. 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 at the following addresses: 1134 S. 21<sup>st</sup> Street (April 1, 2008), 2406 W. Maple Street (September 16, 2006), 2406 W. Maple Street (December 2, 2007), 833 S. 21<sup>st</sup> Place, Unit A (May 8, 2007), and 833 S. 21<sup>st</sup> Street (November 1, 2007) in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. 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 at the following addresses: 1134 S. 21<sup>st</sup> Street (April 1, 2008), 2406 W. Maple Street (September 16, 2006), 2406 W. Maple Street (December 2, 2007), 833 S. 21<sup>st</sup> Place, Unit A (May 8, 2007), and 833 S. 21<sup>st</sup> Street (November 1, 2007), in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondents failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondents' properties at the following addresses: 1134 S. 21<sup>st</sup> Street (April 1, 2008), 1132A S. 21<sup>st</sup> (January 28, 2008), 1132 S. 21<sup>st</sup> Street (May 1, 2008), 1411 S. Comstock Avenue (May 1, 2008), 2406 W. Maple Street (September 16, 2006), 2406 W. Maple Street (December 2, 2007), 833 S. 21<sup>st</sup> Place, Unit A (May 8, 2007), 833 S. 21<sup>st</sup> Street, Unit B (November 1, 2007), 406 N. 34<sup>th</sup> Street, Unit 3 (July 1, 2008), 226 N. 30<sup>th</sup> Street (July 3, 2008), and 226 N. 30<sup>th</sup> Street (September 1, 2007, and September 1, 2008) in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C.

§ 4852d(b)(5).

26. 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 at the following addresses: 1134 S. 21<sup>st</sup> Street (April 1, 2008), 1132 S. 21 Street (January 28, 2008), 1132 S. 21<sup>st</sup> Street (May 1, 2008), 2406 W. Maple Street (September 16, 2006), 2406 W. Maple Street (December 2, 2007), 833 S. 21<sup>st</sup> Place, Unit A (May 8, 2007), and 833 S. 21<sup>st</sup> Street, Unit B (November 1, 2007) in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. 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 at the following addresses: 1134 S. 21<sup>st</sup> Street (April 1, 2008), 1132 S. 21 Street (January 28, 2008), 1132 S. 21<sup>st</sup> Street (May 1, 2008), 2406 W. Maple Street (September 16, 2006), 2406 W. Maple Street (December 2, 2007), 833 S. 21<sup>st</sup> Place, Unit A (May 8, 2007), and 833 S. 21<sup>st</sup> Street, Unit B (November 1, 2007) 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**

28. 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 \$0. In determining the zero 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, and the degree of culpability. Complainant also considered

EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

**General Provisions**

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

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

31. 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.

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

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

34. 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.

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

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



**Robert Ullrich, Respondent**

6-29-11  
Date

Robert Ullrich  
Robert Ullrich, Individually

**ARGU South, LLC, Respondent**

6-29-11  
Date

Robert Ullrich  
Robert Ullrich, on behalf of  
ARGU South, LLC

**United States Environmental Protection Agency, Complainant**

7/29/11  
Date

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

**RECEIVED**  
AUG 03 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**In the Matter of:**  
**Robert Ullrich and ARGO South, LLC**  
**Docket No. TSCA-05-2011-0015**

**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  
United States Environmental Protection Agency  
Region 5

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

JUL 08 2011

OFFICE OF REGIONAL  
COUNSEL

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

JUL 08 2011

OFFICE OF REGIONAL  
COUNSEL

**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 Robert Ullrich and ARGU South, LLC., 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 8607 to:

Mr. Robert Ullrich  
ARGU South, LLC  
N55 West 34781 Lake Drive  
Oconomowoc, Wisconsin 53066

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Steve Kaiser, 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

Docket No. TSCA-05-2011-0015

**RECEIVED**  
AUG 03 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY