



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 10 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9257

Neil and Mary Lou Cowen
c/o H. Kim Te Kolste, Esq.
12814 Ford Drive
Fishers, IN 46038-8798

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0008

Dear Mr. and Mrs. Cowen:

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 10, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,325 is to be paid in the manner prescribed in paragraphs 10 and 11. Please be certain that the number **BD 2750747X012** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 10, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Terry Bonace
Pesticides and Toxics Compliance Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Mark Koller, ORC/C-14J (w/Encl.)
Ray Marasigan, Finance/MF-10J (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	Docket No. TSCA-05-2007-0008
Neil and Mary Lou Cowen)	
Indianapolis, Indiana,)	Proceeding to Assess a Civil Penalty
)	under Section 16(a) of the Toxic
Respondents.)	Substances Control Act

Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Chief of the Chemicals Management Branch, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this administrative action seeking a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. On April 13, 2007, U.S. EPA filed the Complaint in this action against Neil and Mary Lou Cowen (Respondents) of Indianapolis, Indiana. The Complaint alleges that Respondents failed to comply with the lead based paint disclosure requirements imposed on the sale and lease of target housing by Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. The Complaint alleges, in ten counts, violations of 42 U.S.C. § 4852(d), 40 C.F.R. § 745.100, 40 C.F.R. § 745.113(a)(5), and 40 C.F.R. § 745.113(b)(2)-(4) and (6), in three lease transactions and one sales transaction.

3. Respondents did not file an Answer.

Stipulations

4. Respondents admit the jurisdictional allegations in the Complaint and neither admit nor deny the factual allegations in the Complaint.

5. Respondents waive any right to contest the allegations in the Complaint and their right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondents certify that they are complying fully with TSCA.

7. Respondents consent to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalties

9. In consideration of Respondents' willingness to settle this matter, their performance of a Supplemental Environmental Project (SEP), as well as other factors as justice requires, U.S. EPA agrees to mitigate the proposed penalty of \$16,830 to \$3,325.

10. Within 30 days after the effective date of this CAFO, Respondents must pay the \$3,325 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

Mellon Client Service Center
Attn: Shift Supervisor
Lockbox 371531
500 Ross Street
Pittsburgh, PA 15262 – 0001

The check must note the following: In the Matter of Neil and Mary Lou Cowen, the docket number of this CAFO, and the billing document number.

Alternatively, for payments online using ACH debit or credit card, please visit www.pay.gov.

Using the **Search Public Forms** option on the tool bar (left side of page), enter **SFO 1.1** in the search field. Open the form and complete the information requested.

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Terence Bonace (DT-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Mark J. Koller (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

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

13. If Respondents do not pay the civil penalty timely, the 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.

14. Interest will accrue on any amount overdue from the date the payment was due at a rate established by the Secretary of the Treasury. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than thirty days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount ninety days past due.

Supplemental Environmental Project

15. Respondents must complete a SEP, hereinafter referred to as a “Window Replacement Project,” designed to protect tenants from potential lead-based paint hazards by replacing a total of twelve windows in the rental property at 1137 and 1139 Medford Street, Indianapolis, Indiana.

16. 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) (Guidelines), and executed by individuals certified to perform such work under state and local laws and regulations.

17. Respondents 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 15, above. The individuals conducting the Window Replacement Project and the individuals executing the standard lead clearance sampling shall not be the same.

18. Respondents must spend \$8,475 to complete the Window Replacement Project.

19. Respondents certify that they are 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 Respondents sign this CAFO. Respondents further certify that they have not received, and are not negotiating to receive, credit for the Window Replacement Project in any other enforcement action.

20. U.S. EPA may inspect the property at any time to monitor Respondents' compliance with the CAFO requirements. Any access to the building or units therein will be

provided on reasonable notice to Respondents and Respondents will make good faith efforts to obtain tenant cooperation for such access.

21. Respondents 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 15, above, within three months following entry of the CAFO. This report must contain the following information:

- a. a description of the Window Replacement Project as completed at the property listed in paragraph 15, above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property listed in paragraph 15, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized cost 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 cost 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 cost of services used to complete the lead clearance sampling documented by copies of invoices or canceled checks that specifically identify and itemize the cost 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 Respondents have 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 Neil and Mary Lou Cowen will contain deductions or depreciations for any expense associated with the Window Replacement Project.

22. Respondents must submit all notices and reports required by the CAFO by first class mail to Terence Bonace, at the address in paragraph 11, above.

23. In each report that Respondents submit as provided by this CAFO, they or their authorized representative must certify that the report is true and complete by including the following statement signed by the Respondents:

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.

24. If Respondents violate requirements of this CAFO relating to the Window Replacement Project, Respondents must pay stipulated penalties to the United States as follows:

- a. If Respondents do not complete the Window Replacement Project and lead clearance sampling according to this CAFO, Respondents must pay a stipulated penalty of \$8,475;
- b. If Respondents satisfactorily complete the Window Replacement Project and lead clearance sampling according to this CAFO, but spend less than \$8,475, Respondents must pay the difference between \$8,475 and the actual amount spent;
- c. If Respondents fail to ensure and document that lead clearance sampling work for each property listed in paragraph 15, 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, they shall pay a stipulated penalty of \$4,237;
- d. If Respondents fail to ensure and document that the Window Replacement Project complies with the requirements of paragraphs 15 through 18, above, they shall pay a stipulated penalty of \$4,237; and
- e. If Respondents fail to timely submit the Window Replacement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 21, above, or if Respondents fail to satisfactorily address each requirement in the window replacement completion report paragraphs of the CAFO, Respondents 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 \$8,475.

25. U.S. EPA's reasonable and good faith determination of whether Respondents satisfactorily completed the Window Replacement Project and lead clearance sampling and

whether they made good faith, timely efforts to complete the Window Replacement Project and lead clearance sampling will bind Respondents for purposes of this CAFO.

26. Respondents must pay any stipulated penalties within fifteen days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of non-compliance, and shall continue to accrue through the date of completion. Respondents will use the method of payment in paragraphs 10 through 14 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

General Provisions

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

28. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

29. This CAFO does not affect Respondents' responsibility to comply with TSCA and other applicable federal, state and local laws, and regulations.

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

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

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

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

Neil and Mary Lou Cowen, Respondents

7-19-07
Date

Neil Cowen
Neil Cowen

7-19-07
Date

Mary Lou Cowen
Mary Lou Cowen

United States Environmental Protection Agency, Complainant

8-2-07
Date

Mardi Klevs
Mardi Klevs, Chief
Chemicals Management Branch
Land and Chemicals Division

8/6/07
Date

Margaret M. Guernero
Margaret M. Guernero, Director
Land and Chemicals Division

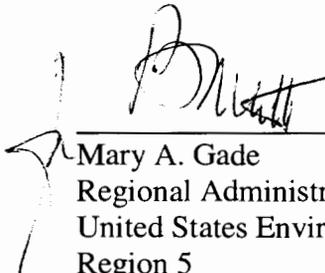
**In the Matter of:
Neil and Mary Lou Cowen
Docket No. TSCA-05-2007-0008**

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.

Date

8-8-07



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

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 Neil and Mary Lou Cowen, was filed on August 10, 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 0005 8931 9257, a copy of the original to the Respondents:

Neil and Mary Lou Cowen
c/o H. Kim Te Kolste, Esq.
12814 Ford Drive
Fishers, IN 46038-8798

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Mark Koller, Counsel for Complainant/C-14J
Ray Marisigan, Finance/MF-10J



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

Docket No. TSCA-05-2007-0008

SEARCHED
SERIALIZED
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FILED