



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

MAR 04 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0192 2632

Frost Brown Todd LLC  
201 East Fifth Street  
Cincinnati, Ohio 45202  
ATTN: Jeffery A. Culver

Charles M. Wolff d/b/a EME Realty TSCA-05-2010-0007

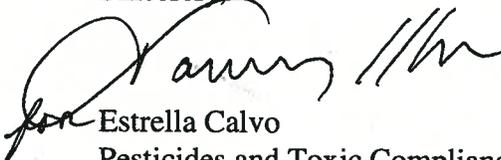
Dear Mr. Kennedy:

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 March 4, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,800.00 is to be paid in the manner described in paragraphs 144 and 145. Please be certain that the number **BD 2751047X007** and the docket number are written on both the transmittal letter and on the check. Payment is due by April 3, 2010, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,



for Estrella Calvo  
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)



6. Respondent consents to the assessment of the civil penalty, specified in this CAFO and to the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its 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 its 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. § 4851, 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 six 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 “owner” as any entity that has legal title to target housing, 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 “lessor” as any individual that offers target housing for lease, rent, or sublease.

14. 40 C.F.R. § 745.103 defines “lessee” as any individual that enters into an agreement to lease, rent, or sublease target housing.

15. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

16. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a purchaser or lessee is obligated under any contract to buy or lease target housing.

17. 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 lack of knowledge of such presence; 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 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 signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

18. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to U.S. EPA administrative 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).

### **General Allegations**

19. Complainant realleges and incorporates here by reference paragraphs 1 through 18, above.

20. Between at least August 6, 2003 and March 1, 2007, Respondent owned and managed residential rental properties located at 1752 Hanfield Street, 815 Race Street, and 2729 Woodburn in Cincinnati, Ohio; and 52 East Mitchell, 54 East Mitchell, and 4346 Vine in St. Bernard, Ohio (referred to individually as “Residential Rental Property” and collectively as the “Residential Rental Properties”).

21. Each Residential Rental Property was constructed prior to 1978.

22. Each Residential Rental Property and each rental unit within such property is “target housing” as defined in 40 C.F.R. § 745.103.

23. On March 15, 2007, a representative of EPA conducted an inspection of Mr. Wolff’s lease documents maintained at his office located at 111 West 9th Street, Cincinnati, Ohio, to monitor compliance with Section 1018 and its implementing regulations found at 40 C.F.R. Part 745, Subpart F.

24. The City of Cincinnati Department of Health’s Order to Control Lead Hazards for target housing located at 1752 Hanfield Street, Apt. 3, Cincinnati, Ohio was received by Respondent on February 9, 2007. The Order to Control Lead Hazards advised Respondent that “Lead hazards were found which are contributing, in whole or in part, to a child’s lead poisoning.” The Order to Control Lead Hazards was accompanied by a Lead Risk assessment Report that advised Respondent of Disclosure Requirements for residential units as required by Ohio law and Federal Law. The assessment states that “Federal law (24 C.F.R. part 35 and 40 C.F.R. part 745) require sellers and lessors of residential units constructed prior to 1978...to disclose and provide a copy of this report to new purchasers or lessees before they become obligated under a lease or sales contract. Property owners and sellers are also required to distribute an educational pamphlet approved by the EPA and include standard warning language

in sales contracts or in or attached to lease contracts to ensure that parents have the information they need to protect children from lead based paint hazards.”

25. Respondent either directly or through Respondent’s authorized agent entered into the following 6 written and 13 oral rental agreements (Rental Contracts) with individuals for the lease of units in the Residential Rental Properties identified below:

<b>Address</b>	<b>Unit</b>	<b>Date of Lease</b>	<b>Type of Contract</b>
1752 Hanfield Street	1	Approx. 03/01/2007	Oral Contract
815 Race Street	9	09/03/2004	Written Contract
“	7	Approx. 03/01/2007	Oral Contract
“	6	Approx. 03/01/2007	Oral Contract
“	4	Approx. 03/01/2007	Oral Contract
“	3	Approx. 03/01/2007	Oral Contract
“	1	02/19/2005	Written Contract
2729 Woodburn	12	Approx. 03/01/2007	Oral Contract
“	11	Approx. 03/01/2007	Oral Contract
“	10	Approx. 03/01/2007	Oral Contract
“	6	Approx. 03/01/2007	Oral Contract
52 East Mitchell		01/10/2007	Written Contract
54 East Mitchell		Approx. 03/01/2007	Oral Contract
4346 Vine	5	Approx. 03/01/2007	Oral Contract
“	4	12/06/2003	Written Contract
“	4	02/15/2007	Written Contract
“	3	07/06/2005	Written Contract
“	2	Approx. 07/01/2007	Oral Contract
“	1	Approx. 03/01/2007	Oral Contract

26. Each of the 19 contracts referenced in paragraph 25, above, covered a term of occupancy greater than 100 days.

27. Between December 6, 2003 and March 1, 2007, Respondent, as the owner and lessor of the Residential Rental Properties offered for lease units in his Residential Rental Properties, and individuals entered into contracts on the dates listed in paragraph 25, above, to lease those units.

28. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, since he offered to lease the target housing referenced in paragraph 25, above, for lease.

29. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Residential Rental Properties referenced in paragraph 25, above, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

30. On March 6, 2008, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

31. On March 10, 2008, Respondent received the Notice of Intent to File Civil Administrative Action referenced in paragraph 30, above. Respondent has claimed an inability to pay a penalty and did provide facts or other information concerning an ability to pay a penalty.

32. The Director of the Land and Chemicals Division has determined that the Respondent has violated the Federal regulations regarding the disclosure of lead-based paint and/or lead-based paint hazards, 40 C.F.R. Part 745, and therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 1 through 19**

33. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

34. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within each contract or

as an attachment to each contract to lease target housing, a Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

35. Count 1: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 1752 Hanfield Street, Apt. 1, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

36. Count 2: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street, Apt. 9, Cincinnati, Ohio, was obligated under the written contract of September 3, 2004, referenced in paragraph 25, above.

37. Count 3: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street, Apt. 7, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

38. Count 4: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

39. Count 5: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street,

Apt. 4, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

40. Count 6: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street, Apt. 3, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

41. Count 7: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 Race Street, Apt. 1, Cincinnati, Ohio, was obligated under the written contract of February 19, 2005, referenced in paragraph 25, above.

42. Count 8: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 2729 Woodburn, Apt. 12, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

43. Count 9: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 2729 Woodburn, Apt. 11, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

44. Count 10: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 2729 Woodburn, Apt. 10, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

45. Count 11: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 2729 Woodburn, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

46. Count 12: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 52 East Mitchell, St. Bernard, Ohio, was obligated under the written contract of January 10, 2007, referenced in paragraph 25, above.

47. Count 13: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 54 East Mitchell, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

48. Count 14: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 5, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

49. Count 15: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of December 6, 2003, referenced in paragraph 25, above.

50. Count 16: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of February 15, 2007, referenced in paragraph 25, above.

51. Count 17: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 3, St. Bernard, Ohio, was obligated under the written contract of July 6, 2005, referenced in paragraph 25, above.

52. Count 18: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 2, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

53. Count 19: Respondent failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 4346 Vine, Apt. 1, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

54. Respondents failure to include, either within each contract or as an attachment to each contract, a Lead Warning Statement, before the lessees were obligated under the contracts for each leasing transaction referenced in paragraphs 35 through 53, above, constitutes 19 violations of 40 C.F.R. § 745.113(b)(1), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Counts 20 through 38**

55. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

56. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing 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 before a lessee is obligated under the contract to lease target housing.

57. Count 20: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 1752 Hanfield Street, Apt. 1, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

58. Count 21: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 9, Cincinnati, Ohio, was obligated under the written contract of September 3, 2004, referenced in paragraph 25, above.

59. Count 22: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 7, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

60. Count 23: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

61. Count 24: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 4, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

62. Count 25: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 3, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

63. Count 26: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 815 Race Street, Apt. 1, Cincinnati, Ohio, was obligated under the written contract of February 19, 2005, referenced in paragraph 25, above.

64. Count 27: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 2729 Woodburn, Apt. 12, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

65. Count 28: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 2729 Woodburn, Apt. 11, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

66. Count 29: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 2729 Woodburn, Apt. 10, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

67. Count 30: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 2729 Woodburn, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

68. Count 31: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 52 East Mitchell, St. Bernard, Ohio, was obligated under the written contract of January 10, 2007, referenced in paragraph 25, above.

69. Count 32: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 54 East Mitchell, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

70. Count 33: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 5, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

71. Count 34: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of December 6, 2003, referenced in paragraph 25, above.

72. Count 35: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of February 15, 2007, referenced in paragraph 25, above.

73. Count 36: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 3, St. Bernard, Ohio, was obligated under the written contract of July 6, 2005, referenced in paragraph 25, above.

74. Count 37: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 2, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

75. Count 38: Respondent failed to include, either within the contract or as an attachment to the contract, 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, before the lessee at 4346 Vine, Apt. 1, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

76. Respondent's failure to include, either within each contract or as an attachment to each contract, 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, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 57 through 75, above, constitutes 19 violations of 40 C.F.R. § 745.113(b)(2), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 39 through 57**

77. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

78. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. Part § 745.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, 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, or a statement that no such records exist.

79. Count 39: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 1752 Hanfield, Apt. 1, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

80. Count 40: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 815 Race Apt 9, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

81. Count 41: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 815 Race Street, Apt. 7, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

82. Count 42: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 815 Race Street, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

83. Count 43: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such

records existed, before the lessee at 815 Race Street, Apt. 4, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

84. Count 44: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 815 Race Street, Apt. 3, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

85. Count 45: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 815 Race Street, Apt. 1, Cincinnati, Ohio, was obligated under the written contract of February 19, 2005, referenced in paragraph 25, above.

86. Count 46: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 2729 Woodburn, Apt. 12, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

87. Count 47: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 2729 Woodburn, Apt. 11, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

88. Count 48: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 2729 Woodburn, Apt. 10, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

89. Count 49: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 2729 Woodburn, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

90. Count 50: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 52 East Mitchell, St. Bernard, Ohio, was obligated under the written contract of January 10, 2007, referenced in paragraph 25, above.

91. Count 51: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 54 East Mitchell, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

92. Count 52: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such

records existed, before the lessee at 4346 Vine, Apt. 5, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

93. Count 53: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of December 6, 2003, referenced in paragraph 25, above.

94. Count 54: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of February 15, 2007, referenced in paragraph 25, above.

95. Count 55: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 4346 Vine, Apt. 3, St. Bernard, Ohio, was obligated under the written contract of July 6, 2005, referenced in paragraph 25, above.

96. Count 56: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 4346 Vine, Apt. 2, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

97. Count 57: Respondent failed to include, either within the contract or as an attachment to the contract, 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, or a statement that no such records existed, before the lessee at 4346 Vine, Apt. 1, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

98. Respondent's failure to include either within each contract or as an attachment to each contract to lease target housing, 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, or a statement that no such records existed, before the lessees were obligated under the contract for each of the leasing transactions referenced in paragraphs 79 through 97, above, constitutes 19 violations of 40 C.F.R. § 745.113(b)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Counts 58 through 76**

99. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

100. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each 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 required under 15 U.S.C. § 2696.

101. Count 58: Respondent failed 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 the lessee at 1752 Hanfield Street, Apt. 1, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

102. Count 59: Respondent failed 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 the lessee at 815 Race Street, Apt. 9, Cincinnati, Ohio, was obligated under the written contract of September 3, 2004, referenced in paragraph 25, above.

103. Count 60: Respondent failed 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 the lessee at 815 Race Street, Apt. 7, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

104. Count 61: Respondent failed 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 the lessee at 815 Race Street, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

105. Count 62: Respondent failed 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 the lessee at 815 Race Street, Apt. 4, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

106. Count 63: Respondent failed 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 the lessee at 815 Race Street, Apt. 3, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

107. Count 64: Respondent failed 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 the lessee at 815 Race Street, Apt. 1, Cincinnati, Ohio, was obligated under the written contract of February 19, 2005, referenced in paragraph 25, above.

108. Count 65: Respondent failed 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 the lessee at 2729 Woodburn, Apt. 12, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

109. Count 66: Respondent failed 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 the lessee at 2729 Woodburn, Apt. 11, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

110. Count 67: Respondent failed 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 the

lessee at 2729 Woodburn, Apt. 10, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

111. Count 68: Respondent failed 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 the lessee at 2729 Woodburn, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

112. Count 69: Respondent failed 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 the lessee at 52 East Mitchell, St. Bernard, Ohio, was obligated under the written contract of January 10, 2007, referenced in paragraph 25, above.

113. Count 70: Respondent failed 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 the lessee at 54 East Mitchell, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

114. Count 71: Respondent failed 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 the lessee at 4346 Vine, Apt. 5, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

115. Count 72: Respondent failed 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 the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract December 6, 2003, referenced in paragraph 25, above.

116. Count 73: Respondent failed 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 the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of February 15, 2007, referenced in paragraph 25, above.

117. Count 74: Respondent failed 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 the lessee at 4346 Vine, Apt. 3, St. Bernard, Ohio, was obligated under the written contract of July 6, 2005, referenced in paragraph 25, above.

118. Count 75: Respondent failed 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 the lessee at 4346 Vine, Apt. 2, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

119. Count 76: Respondent failed 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 the

lessee at 4346 Vine, Apt. 1, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

120. Respondent's failure to include, either within each contract or as an attachment to each 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 required under 15 U.S.C. § 2696 before the lessees were obligated under the contract for each of the leasing transactions referenced in paragraphs 101 through 119, above, constitutes 19 violations of 40 C.F.R. § 745.113(b)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Counts 77 through 95**

121. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

122. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract, 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.

123. Count 77: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 1752 Hanfield, Apt. 1, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

124. Count 78: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 815 Race Street, Apt. 9, Cincinnati, Ohio, was obligated under the written contract of September 3, 2004, referenced in paragraph 25, above.

125. Count 79: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 815 Race Street, Apt. 7, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

126. Count 80: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 815 Race Street, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

127. Count 81: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 815 Race Street, Apt. 4, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

128. Count 82: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the

lessee at 815 Race Street, Apt. 3, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

129. Count 83: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 815 Race Street, Apt. 1, Cincinnati, Ohio, was obligated under the written contract of February 19, 2005, referenced in paragraph 25, above.

130. Count 84: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 2729 Woodburn, Apt. 12, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

131. Count 85: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 2729 Woodburn, Apt. 11, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

132. Count 86: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 2729 Woodburn, Apt. 10, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

133. Count 87: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 2729 Woodburn, Apt. 6, Cincinnati, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

134. Count 88: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 52 East Mitchell, St. Bernard, Ohio, was obligated under the written contract of January 10, 2007, referenced in paragraph 25, above.

135. Count 89: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 54 East Mitchell, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

136. Count 90: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 4346 Vine, Apt. 5, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

137. Count 91: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the

lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of December 6, 2003, referenced in paragraph 25, above.

138. Count 92: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 4346 Vine, Apt. 4, St. Bernard, Ohio, was obligated under the written contract of February 15, 2007, referenced in paragraph 25, above.

139. Count 93: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 4346 Vine, Apt. 3, St. Bernard, Ohio, was obligated under the written contract of July 6, 2005, referenced in paragraph 25, above.

140. Count 94: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 4346 Vine, Apt. 2, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

141. Count 95: Respondent failed to include, either within the contract or as an attachment to the contract, 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 such signature before the lessee at 4346 Vine, Apt. 1, St. Bernard, Ohio, was obligated under the oral contract referenced in paragraph 25, above.

142. Respondent's failure to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge or the dates of such signature before the lessees were obligated under the contract for each of the leasing transactions referenced in paragraphs 123 through 141, above, constitutes 19 violations of 40 C.F.R. § 745.113(b)(6), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Civil Penalty**

143. 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 \$1,800. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability, and Respondent's agreement to perform a supplemental environmental project. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

144. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,800 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurers, United States of America," to:

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

145. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Estrella Calvo (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Susan Perdomo (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

147. If Respondent does not pay the civil penalty timely or any stipulated penalties due under paragraph 163, below, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. §2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

148. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payments was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **Supplemental Environmental Project**

149. Within five months after entry of this CAFO, Respondent must complete a supplemental environmental project (SEP), in the form of a Window Replacement Project

(lead-based paint abatement) and post-abatement clearance testing designed to protect tenants from potential lead-based paint hazards by replacing windows in rental property Units 6, 7, 8, 11 and 12 at 2729 Woodburn, Cincinnati, Ohio, pursuant to paragraphs 150 through 151 at the end of this five month period.

150. Each Unit must pass post-abatement clearance testing to confirm a lead-safe condition of the premises at the completion of the project.

151. All lead-based paint abatement and post-abatement clearance testing must be executed by individuals certified and licensed to perform such work under federal, state, and local laws and regulations. The individual or company executing the post-abatement clearance testing must not be paid or employed or, otherwise compensated by the individuals conducting the lead-based paint abatement component of the SEP.

152. Respondent must conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* and the State of Ohio's Administrative Code, Chapter 3701-32, *Lead Hazard Abatement and Inspection Activities*, unless otherwise specifically provided in this CAFO.

153. Respondent must spend at least \$16,200 to complete the SEP.

154. Respondent shall not use any HUD assistance, including all HUD grants, as well as Community Development Block Grants or any funds from any state or local agency, including but not limited to the Ohio Department of Health's Childhood Lead Poisoning Prevention Program, to perform the \$16,200 of lead-based paint abatement and post-abatement clearance testing.

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

156. EPA may inspect the property at any time to monitor Respondent's compliance with this CAFO's SEP requirements. Any access to the target housing will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

157. Respondent must submit a SEP completion report to EPA for the property identified in paragraph 149 above, within six months following entry of the CAFO. These reports must contain the following information:

- a. detailed description of the SEP as completed at the property;
- b. post-abatement clearance inspection report identifying visual clearance results, dust sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the lead-based paint abatement documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. itemized costs of services used to complete the post-abatement clearance inspection documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the costs of the services;
- e. documentation that the individuals who performed the lead-based paint abatement and post-abatement clearance inspection are certified to perform such work in accordance with federal, state and local law and regulations;
- f. certification that Respondent has completed the SEP in compliance with this CAFO; and
- g. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

158. Respondent must submit all notices and reports required by the CAFO by first class mail to Estrella Calvo of the Pesticides and Toxics Compliance Section at the address provided in paragraph 145, above.

159. In each report that Respondent submits as provided by this CAFO, Respondent or Respondent's 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, it 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.

160. Following receipt of the SEP completion report as described in paragraph 157, above, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 163, below.

161. If EPA exercises option b in paragraph 160, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEPs as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 162, below.

162. If Respondent violates any requirements of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 153, above, Respondent must pay a stipulated penalty equal to the difference between the amount he spent on the SEP and the amount set forth in paragraph 153;
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$8,100, in addition to any penalty required under subparagraph a, above;
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$8,100, in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier;
- d. If Respondent fails to ensure and document that the lead-based paint abatement for the property identified in paragraph 149, 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 \$8,100, in addition to any penalty required under subparagraph a, above.
- e. If Respondent fails to ensure and document that the post-abatement clearance testing for the units identified in paragraph 149, above, are 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 \$8,100, in addition to any penalty required under subparagraph a, above; and
- f. If Respondent fails to submit timely the SEP completion report or fails to submit timely any other report required in paragraph 157, above, 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 \$16,200. These penalties will accrue from the date Respondent was required to meet each milestone until Respondent achieves compliance with the milestone.

163. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out

those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

164. Subject to paragraph 163, EPA's determination of whether the Respondent satisfactorily completed the SEP will bind Respondent.

165. Subject to paragraph 163, Respondent must pay any stipulated penalties within 30 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 144 and 145 above, and will pay interest, handling charges, and penalties on overdue amounts as specified in paragraph 148 above.

166. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

167. Any public statement that Respondent makes relating to the SEP must include the following language, "Charles Wolff d/b/a EME Realty, undertook this project under the settlement of the U.S. Environmental Protection Agency's enforcement action against Charles Wolff d/b/a EME Realty, for violations of the Lead Act."

#### **General Provisions**

168. This CAFO resolves only Respondent's liability for federal civil penalties for the

violations alleged in the CAFO.

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

170. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state and local laws.

171. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

172. The terms of the CAFO bind the Respondent and his successors and assigns.

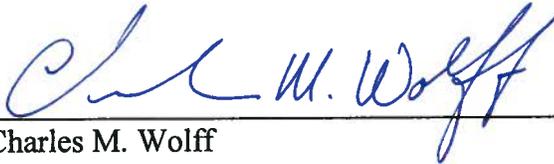
173. Each person signing this Consent Agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**Charles M. Wolff**  
**d/b/a EME Realty, Respondent**

19 FEB 2010  
Date

  
Charles M. Wolff  
d/b/a EME Realty

**U.S. Environmental Protection Agency, Complainant**

2/26/10  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Charles M. Wolff**  
**d/b/a EME Realty**  
**Docket No. TSCA-05-2010-0007**

**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.

3/1/10  
Date

Walter W. Woollyh  
for  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**RECEIVED**  
MAR 04 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**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 Charles M. Wolff d/b/a EME Realty, was filed on March 4, 2010, 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.7001 0320 0006 0192 2632 to:

Frost Brown Todd LLC  
201 East Fifth Street  
Cincinnati, Ohio 45202  
ATTN: Jeffery A. Culver

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, 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-05-2010-0007

**RECEIVED**  
MAR 04 2010

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
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