

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

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IN THE MATTER OF:

Consent Agreement

James Hahn
547 8th Street
Ambridge, PA 15317,

Proceeding under Sections 409 and 16(a) of
the Toxic Substances Control Act, 15 U.S.C.
§§ 2689 and 2615(a)

RESPONDENT.

Docket No.: TSCA-03-2012-0063

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and James Hahn ("Respondent"), pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent's alleged failure, as an owner and lessor of certain housing, to comply with requirements of 40 C.F.R. Part 745, Subpart F, Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.
3. In accordance with 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in the Findings of Fact and Conclusions of Law section of this Consent Agreement.

II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.

III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO".

6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

11. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "target housing" means "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. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term "residential dwelling" means either a single family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
13. Respondent at all times relevant to the violations alleged in this Consent Agreement, was an "owner" and the "lessor" of the following "residential dwelling", as those terms are defined at 40 C.F.R. § 745.103: Address: 618 8th Street, Ambridge, PA 15003.
14. The residential dwelling referred to above was constructed prior to 1978 and is "target housing" as that term is defined at 40 C.F.R. § 745.103. This residential dwelling is hereinafter referred to as the "Target Housing."
15. Respondent leased the Target Housing on October 1, 2009, hereinafter referred to as the "Lease Transaction."

16. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means “paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm²] or 0.5 percent by weight.”
17. The Lease Transaction was not:
- (1) a “[s]ale[] of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a);
 - (2) a “[l]ease[] of target housing . . . found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. § 745.101(b);
 - (3) a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101 (c); or
 - (4) a “[r]enewal[] of [an] existing lease[] . . . in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).
18. “Lessees” as defined in 40 C.F.R. § 745.103 moved into and resided at the Target Housing during the term of the Lease Transaction.

COUNT 1

19. Pursuant to 40 C.F.R. § 745.113(b)(1), the lessor is required to include, either as an attachment to or within the contract for lease, a Lead Warning Statement in accordance with language provided therein.
20. The contract for the Lease Transaction did not include, as an attachment to or within such contract, a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1).
21. Respondent’s failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(1) in regards to the Lease Transaction is a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNT 2

22. Pursuant to 40 C.F.R. § 745.113(b)(2), the lessor is required to include, either as an attachment to or within the contract for lease, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or lessor’s lack of knowledge of such presence.
23. The contract for the Lease Transaction did not include, as an attachment to or within the contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Target Housing.

24. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(2) in regards to the Lease Transaction, is a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNT 3

25. Pursuant to 40 C.F.R. § 745.113(b)(3), the lessor is required to include, either as an attachment to or within the contract for lease, a list of records or reports which were available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or to indicate that no such records or reports were available.
26. The contract for the Lease Transaction did not include, as an attachment to or within the contract, a list of records or reports which were available to the lessor pertaining to lead-based paint or lead-based paint hazards in the Target Housing that were provided to the lessees or did not indicate that no such records or reports were available.
27. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(3) in regards to the Lease Transaction, is a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNT 4

28. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor is required to provide the lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #747-K- 94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.
29. Respondent did not provide the required lead hazard pamphlet to the lessees in the Lease Transaction before the lessees were obligated under a contract to lease the target housing.
30. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.107(a)(1) in regards to the Lease Transactions is a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

V. CIVIL PENALTY

31. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **\$3,096** which Respondent shall be liable to pay in accordance with the terms set forth below. To avoid the assessment of interest, administrative costs and late payment penalties described herein, Respondent must timely pay the civil penalty within thirty days after the date on which a copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.
32. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section

16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), i.e., the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Section 1018 — Disclosure Rule Enforcement Response and Penalty Policy ("December 2007 ERPP"). EPA also has considered the Adjustment of Civil Monetary Penalties for Inflation, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule ("2004 Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, penalties for Disclosure Rule violations occurring after January 30, 1997 were increased by 10% to account for inflation, thereby adjusting the statutory maximum penalty to \$11,000. While the statutory maximum penalty for Disclosure Rule violations remains at \$11,000, 40 C.F.R. Part 19 and the 2004 Skinner Memorandum provide that penalties for Disclosure Rule violations occurring after March 15, 2004, are to be increased by an additional 17.23% to account for subsequent inflation, not to exceed the aforementioned \$11,000 limitation. The December 2007 ERPP recognizes and incorporates the above penalty inflation adjustment requirements in its penalty calculation methodology, guidance and appended matrices.

VI. PAYMENT TERMS

33. Respondent shall pay the civil penalty plus any interest, administrative fees, and late payment penalties owed in the following manner:
34. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., TSCA-03-2012-0063.
35. All checks shall be made payable to "United States Treasury."
36. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105
37. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

38. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

39. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

40. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

41. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

42. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

43. Copies of all checks or electronic payments shall be sent simultaneously to:

Demian Ellis
Land and Chemicals Division (3LC61)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-202

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. INTEREST AND LATE FEES

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

45. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

46. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue under 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

47. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, pursuant to 31 C.F.R. § 901.9(d).

48. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VIII. EFFECT OF SETTLEMENT

49. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA and/or the RLBPHRA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

IX. OTHER APPLICABLE LAWS

50. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations.

X. CERTIFICATION OF COMPLIANCE

51. Respondent certifies to Complainant, upon investigation, to the best of his knowledge and belief, that Respondent is currently in compliance with the provisions of TSCA, the RLBPHRA and 40 C.F.R. Part 745, Subpart F at the Target Properties.

XI. RESERVATION OF RIGHTS

52. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18 (c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

XII. PARTIES BOUND

53. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's officers and directors (in their official capacity), successors and assigns. By his signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

XIII. EFFECTIVE DATE

54. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIV. ENTIRE AGREEMENT

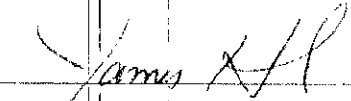
55. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XV. SIGNATURES

For Respondent:

James Hahn

Date: 12/9/11




By: James Hahn

For Complainant

U.S. Environmental Protection Agency, Region 3

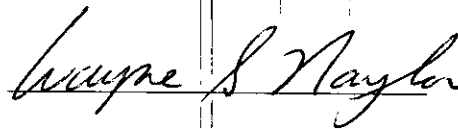
Date: 12/20/11



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 12/22/11



Per

Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

James Hahn
547 8th Street
Ambridge, PA 15317,

RESPONDENT.

Final Order

Proceeding under Sections 409 and 16(a) of
the Toxic Substances Control Act, 15 U.S.C.
§§ 2689 and 2615(a)

Docket No.: TSCA-03-2012-0063

FINAL ORDER

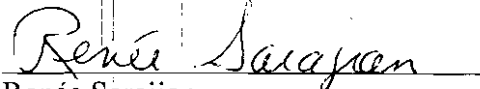
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

WHEREFORE, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 et seq., and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil penalty under Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violation of the RLBPHRA, and having determined, based on the representations of the parties to the attached Consent Agreement, that the agreed-upon civil penalty was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **\$3,096** in accordance with the payment provisions set forth in the attached Consent Agreement.

The effective date of the foregoing Consent Agreement and this FINAL ORDER is the date on which this FINAL ORDER is filed with the EPA Regional Hearing Clerk.

Date

12/29/11



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

James Hahn
547 8th Street
Ambridge, PA 15317,

RESPONDENT.

Consent Agreement

Proceeding under Sections 409 and 16(a) of
the Toxic Substances Control Act, 15 U.S.C.
§§ 2689 and 2615(a)


Docket No.: TSCA-03-2012-0063

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re*, Docket No. TSCA-03-2012-0063 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to James Hahn, Lessor, 547 8th Street, Ambridge, PA 15317.

Dated: _____

12/29/11



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region 3