



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

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7673 2659

W. Walt Lowe and D. Lynn Lowe, Trustees
Lowe Realty, Inc.
c/o Marilyn R. Ratliff, Esq.
123 NW 4th Street, Suite 304
Evansville, Indiana 47708

Consent Agreement and Final Order, Docket No. TSCA-05-2012-0005

Dear Ms. Ratliff:

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 December 13, 2011, with the Regional Hearing Clerk.

In accordance with paragraph 27 of the CAFO, there is no assessed civil penalty.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxic Compliance Section

Enclosures

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

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DEC 13 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. TSCA-05-2012-0005
)	
Lowe Realty, Inc.)	
Evansville, Indiana)	
)	
)	Proceeding to Assess a Civil
)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
_____)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Lowe Realty, Inc., a Trust doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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

Jurisdiction and Waiver of Right to Hearing

7. 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. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines target housing as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or lack of knowledge of such presence; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet*; and, the signatures and dates of signature of the lessor and lessee certifying the accuracy of their statements.

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

15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

16. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Between July 31, 2009, and November 7, 2009, Respondent owned single family dwellings at 2206 Ravenswood Drive; 2212 Kathleen Avenue; 639 Jefferson Avenue; 971 Blackford Avenue; 2140 Ravenswood Drive and 2124 Ravenswood Drive, Evansville, Indiana (Respondent's properties).

18. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following dates, Respondent directly entered into the following lease agreements (contracts) with individuals for the lease of Respondent's properties:

Address	Date of Lease
2206 Ravenswood Drive, Evansville, Indiana	July 31, 2009
2212 Kathleen Avenue, Evansville, Indiana	August 28, 2009
639 Jefferson Avenue, Evansville, Indiana	September 3, 2009
971 Blackford Avenue, Evansville, Indiana	October 30, 2009
2140 Ravenswood Drive, Evansville, Indiana	November 4, 2009
2124 Ravenswood Drive, Evansville, Indiana	November 7, 2009

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

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

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

23. Respondent failed to include a lead warning statement, either within the contracts or as an attachment to the contracts for the lease of Respondent’s properties at 2206 Ravenswood Drive; 2212 Kathleen Avenue; 639 Jefferson Avenue; 971 Blackford Avenue; 2140 Ravenswood Drive and 2124 Ravenswood Drive, Evansville, Indiana , in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessees or a statement that no such records are available, either within the contracts or as an attachment to the contracts for the lease of Respondent’s properties at 2206 Ravenswood Drive; 2212 Kathleen Avenue; 639 Jefferson Avenue; 971 Blackford Avenue; 2140 Ravenswood Drive and 2124 Ravenswood Drive, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondent failed to include a statement by the lessees affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the contracts or as

an attachment to the contracts for the lease of Respondent's properties at 2206 Ravenswood Drive; 2212 Kathleen Avenue; 639 Jefferson Avenue; 971 Blackford Avenue; 2140 Ravenswood Drive and 2124 Ravenswood Drive, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondent failed to include the signatures of the lessor, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contracts or as an attachment to the contracts for the lease of Respondent's properties at 2206 Ravenswood Drive; 2212 Kathleen Avenue; 639 Jefferson Avenue; 971 Blackford Avenue; 2140 Ravenswood Drive and 2124 Ravenswood Drive, Evansville, Indiana, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

27. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$0. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, the effect on ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007. Respondent submitted financial documentation in support of an assertion of inability to pay EPA's initially proposed potential penalty. After analysis of the submitted documentation, EPA determined the above described penalty amount in this case.

General Provisions

28. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

29. 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.

30. 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.

31. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

32. The terms of this CAFO bind Respondent, and its successors and assigns.

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

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


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

In the Matter of:

**W. Walt Lowe
Lowe Realty, Inc.
Evansville, Indiana
Docket No.**


W. Walt Lowe, d/b/a Lowe Realty, Respondent

10/22/11
Date


W. Walt Lowe
d/b/a Lowe Realty

United States Environmental Protection Agency, Complainant

12/2/11
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

W. Walt Lowe
Lowe Realty, Inc.
Evansville, Indiana
Docket No. TSCA-05-2012-0005

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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.

12-9-11

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

NOV 23 2011

OFFICE OF REGIONAL
COUNCIL

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 Lowe Realty, Inc., Evansville, Indiana, was filed on December 13, 2011 with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7673 2659 to:

W. Walt Lowe and D. Lynn Lowe, Trustees
Lowe Realty, Inc.
c/o Marilyn R. Ratliff, Esq.
123 NW 4th Street, Suite 304
Evansville, Indiana 47708

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Tom Turner, 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

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