



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

APR 19 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 7886

Mr. Kirk B. Bruce  
20245 West 12 Miles Road,  
Suite 120  
Southfield, Michigan 48076

KBB Lydia, LLC and Kirk B. Bruce

**TSCA-05-2010-0010**

Dear Mr. Bruce:

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 April 19, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$500.00 is to be paid in the manner described in paragraphs 35 and 36. Please be certain that the number **BD 2751047X009** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 19, 2010, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Estrella Calvo".

Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
KBB Lydia, LLC )  
Southfield, Michigan and )  
Kirk B. Bruce )  
Ferndale, Michigan, )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2010-0010

Proceeding to Assess a Civil  
Penalty Under Section 16(a)  
Toxic Substances Control Act,  
15 U.S.C. § 2615(a)

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Consent Agreement and Final Order Commencing and Concluding the Proceeding  
REGIONAL HEARING CLERK  
ENVIRONMENTAL  
PROTECTION AGENCY

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondents are KBB Lydia, LLC, a corporation authorized to do business in the State of Michigan with an address of 20245 West 12 Mile Road, Suite 120, Southfield, Michigan, and Kirk B. Bruce, of 1641 Wordsworth Street., Ferndale, Michigan, an individual (“Respondents”).
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

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

**Jurisdiction and Waiver of Right to Hearing**

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

8. Respondents waives their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and their right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

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

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

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

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships,

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

14. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a 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.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet*; and, the signatures and dates of signature of the lessor, agent, and lessee certifying the accuracy of their statements.

16. 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).

17. 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, 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**

18. Between at least June 4, 2004 and November 14, 2005, Respondents, KBB Lydia,

LLC and/or Kirk B. Bruce managed residential rental property located at 19211 Albion, 18932 Alcoy, 4412 Balfour, 4602/04 Beaconsfield, 4643 Beaconsfield, 5043 Beaconsfield, 5804 Beaconsfield, 3959 Beaconsfield, 3611 Beaconsfield, 3985 Beaconsfield, 3996 Beaconsfield, 4104 Beaconsfield, 5111 Beaconsfield, 10210 Beaconsfield, 4666 Bedford, 17212 Birwood, 10207 Boleyn, 5926 Buckingham, 11127 Courville, 5944 Eastlawn, 14190 Fairmount, 11151 Glenfield, 19952 Goulburn, 10083 Greensboro, 10306 Greensboro, 9241 Harvard, 14652 Hazelridge, 15824 Marlowe, 14193 Montrose, 5909 Old Town, 6179 Old Town, 6719 Plainview, 12701 Riad, 15262 Rochelle, 12632 Rosemary, 10471 Roxbury, 18501 Schoenherr, 15801 E. State Fair, 16199 Strathmoor, 10765 Stratman, 3936 3 Mile Drive, 12303 Wade, 10366 West Point, 22059 Wilmarth, 20067 Yacama, Detroit, Michigan and 3140 Berkshire, Warren, Michigan (Residential Rental Property).

19. The Residential Rental Properties referenced in paragraph 18, above, were constructed prior to 1978.

20. The Residential Rental Properties and each rental unit within each property referenced in paragraph 18, above, are “target housing” as defined in 40 C.F.R. § 745.103.

21. On September 8, 2005, Complainant issued an administrative subpoena to Kirk Bruce and KBB Lydia, LLC, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements, contracts for sale and lead-based paint disclosure documentation for rental and sales transactions at apartment buildings and single-family dwellings owned or managed by Respondents from September 1, 2002 through date of submittal on November 10, 2005.

22. Respondents, KBB Lydia, LLC, and/or Kirk Bruce, either directly or through a Respondent’s authorized agent, entered into the following 45 written rental agreements (Rental

Contracts) with individuals for the lease of Residential Rental Property identified below:

| <b>Address</b>       | <b>Children under 6</b> | <b>Children under 18</b> | <b>Date of Lease</b> |
|----------------------|-------------------------|--------------------------|----------------------|
| 19211 Albion         | No                      | Yes                      | 10/28/05             |
| 18932 Alcoy          | No                      | Yes                      | 08/01/05             |
| 4412 Balfour         | No                      | No                       | 04/19/05             |
| 4602/04 Beaconsfield | No                      | No                       | 10/01/04             |
| 4643 Beaconsfield    | No                      | No                       | 01/09/05             |
| 5043 Beaconsfield    | No                      | Yes                      | 06/04/04             |
| 5804 Beaconsfield    | No                      | No                       | 04/16/05             |
| 3959 Beaconsfield    | No                      | Yes                      | 07/01/04             |
| 3611 Beaconsfield    | No                      | No                       | 12/21/04             |
| 3985 Beaconsfield    | No                      | No                       | 06/01/05             |
| 3996 Beaconsfield    | No                      | No                       | 03/16/05             |
| 4104 Beaconsfield    | No                      | Yes                      | 07/12/04             |
| 5111 Beaconsfield    | No                      | No                       | 01/06/05             |
| 10210 Beaconsfield   | No                      | Yes                      | 07/17/05             |
| 4666 Bedford         | No                      | Yes                      | 07/25/05             |
| 3140 Berkshire       | No                      | No                       | 02/19/05             |
| 17212 Birwood        | No                      | Yes                      | 08/30/05             |
| 10207 Boleyn         | No                      | No                       | 04/20/05             |
| 5926 Buckingham      | No                      | No                       | 01/17/05             |
| 11127 Courville      | No                      | No                       | 12/08/04             |
| 5944 Eastlawn        | No                      | Yes                      | 10/15/04             |
| 14190 Fairmount      | No                      | No                       | 04/20/05             |
| 11151 Glenfield      | No                      | No                       | 02/26/05             |
| 19952 Goulburn       | No                      | Yes                      | 06/21/05             |
| 10083 Greensboro     | No                      | No                       | 05/27/05             |
| 10306 Greensboro     | No                      | Yes                      | 10/04/04             |
| 9241 Harvard         | No                      | No                       | 02/26/05             |
| 14652 Hazelridge     | No                      | Yes                      | 10/06/05             |
| 15824 Marlowe        | No                      | Yes                      | 05/21/05             |
| 14193 Montrose       | No                      | Yes                      | 07/28/05             |
| 5909 Old Town        | No                      | No                       | 01/10/05             |
| 6179 Old Town        | No                      | Yes                      | 10/28/05             |
| 12701 Riad           | No                      | No                       | 02/24/05             |
| 15262 Rochelle       | No                      | Yes                      | 07/22/05             |
| 12632 Rosemary       | No                      | No                       | 03/18/05             |
| 10471 Roxbury        | No                      | No                       | 03/03/05             |
| 18501 Schoenherr     | No                      | Yes                      | 07/16/05             |
| 15801 E. State Fair  | No                      | Yes                      | 08/26/05             |
| 16199 Strathmoor     | No                      | No                       | 03/01/05             |
| 10765 Stratman       | No                      | No                       | 04/22/05             |

|                   |    |     |          |
|-------------------|----|-----|----------|
| 3936 3 Mile Drive | No | No  | 04/20/05 |
| 12303 Wade        | No | Yes | 08/05/05 |
| 10366 West Point  | No | Yes | 10/20/05 |
| 20067 Yacama      | No | No  | 03/01/05 |
| 20067 Yacama      | No | No  | 08/07/05 |

23. Each of the 45 Contracts referenced in paragraph 22, above, covered a term of occupancy greater than 100 days.

24. Between June 4, 2004 and November 14, 2005, Respondents, KBB Lydia, LLC and Kirk Bruce, as manager or authorized agent of the Residential Rental Property offered for lease units in the Residential Rental Properties, and individuals entered into Contracts on the dates listed in paragraph 18, above, to lease those units.

25. The parties entered into tolling agreements to toll any statute of limitations potentially applicable to EPA's claims against Respondents.

26. Respondent, KBB Lydia, LLC is an "agent," as defined by 40 C.F.R. § 745.103, since it entered into Contracts with the owners of the Residential Rental Properties for the purpose of leasing the target housing referenced in paragraph 18, above.

27. Respondent, Kirk Bruce is an "agent," as defined by 40 C.F.R. § 745.103, since he entered into Contracts with the owners of the Residential Rental Properties for the purpose of leasing the target housing referenced in paragraph 18, above.

28. Each individual who signed a lease to pay rent in exchange for occupancy of a unit or dwelling referenced in paragraph 18, above, became a "lessee," as defined in 40 C.F.R. § 745.103.

29. Respondents failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the

lease of Residential Rental Property at the addresses set forth in paragraph 18, above, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondents failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraph 18, above, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

31. Respondents failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraph 18, above, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

32. Respondents failed to include the signatures of the lessor, agent and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraph 18, above, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

33. Respondents failed to retain a copy of the completed attachments or lease contracts containing the information required under 40 C.F.R. § 745.113(b) for no less than three years from the commencement of the leasing period for the contracts to lease Residential Rental Property at the addresses set forth in paragraph 18, above, in violation of 40 C.F.R.

§ 745.113(c)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Civil Penalty**

34. 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 \$500.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondents, ability to pay, effect on ability to continue to do business, any history of such prior violations and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

35. Within 30 days after the effective date of this CAFO, Respondents must pay a \$500.00 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state the case title, In the Matter of KBB Lydia, LLC and Kirk B. Bruce, the docket number of this CAFO, and the billing document number.

36. A transmittal letter stating Respondents' names, the case title, each Respondent's complete addresses, the case docket number and the billing document number must accompany the payment. Respondents must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-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

Mary McAuliffe (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

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

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

#### **General Provisions**

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

41. 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.

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

43. KBB Lydia, LLC and Kirk B. Bruce each certify to their respective compliance with the Lead Act and the Disclosure Rule.

44. The terms of this CAFO bind Respondents, and each Respondent's successors and assigns.

45. 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.

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

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

**KBB Lydia, LLC, Respondent**

4/6/2010  
Date

  
Kirk B. Bruce

**Kirk B. Bruce, Respondent**

4/6/2010  
Date

  
Kirk B. Bruce

**United States Environmental Protection Agency, Complainant**

4/15/10  
Date

  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
KBB Lydia, LLC and Kirk B. Bruce  
Docket No. TSCA-05-2010-0010

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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.

4/16/10

\_\_\_\_\_  
Date

*Walter W. Kovalyk*

\_\_\_\_\_  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

**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 KBB Lydia, LLC and Kirk B. Bruce, was filed on April 19, 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 0189 7886 to:

Mr. Kirk B. Bruce  
20245 West 12 Miles Road,  
Suite 120  
Southfield, Michigan 48076

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Mary McAuliffe, 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-05-2010-0010