



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 17 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0183 0029

Phil E. Wood
301 South Street
West Point, Illinois 62380

Phil E. Wood TSCA-05-2009-0006

Dear Mr. Wood:

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 February 17, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,000 is to be paid in the manner described in paragraphs 27 and 28. Please be certain that the number BD 2750947X002 and the docket numbers are written on both the transmittal letter and on the check. Payment is due by March 19, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
James J. Manning, Heyl Royster Voelker & Allen (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
FEB 17 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. TSCA 95-2009-0006
)	
Phil E. Wood)	Proceeding to Assess a Civil
West Point, Illinois)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
_____)	

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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 Phil E. Wood, an individual who resides at 301 South Street, West Point, Illinois.
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 his 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 his 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 “purchaser” as any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations and “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration.

13. 40 C.F.R. § 745.113(a) requires that each contract to sell target housing include an attachment containing the following elements: a lead warning statement; a statement by the

seller 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 seller that have been provided to the purchaser regarding lead-based paints and/or lead-based paint hazards in target housing or a statement that no such records are available; a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the *Lead Hazard Information Pamphlet*; a statement by the purchaser that he or she has received or waived the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); and, the signatures and dates of signatures of the seller, and purchaser certifying the accuracy of their statements. 40 C.F.R. § 745.107(a) requires that the seller also provide the purchaser with the *Lead Hazard Information Pamphlet*.

14. 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).

15. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the Administrator of EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. On February 14, 2006, Respondent entered into a written sales contract with individuals for the sale of target housing located at 209 South Street, West Point, Illinois.

17. Respondent is a “seller,” as defined in 40 C.F.R. § 745.103, because he entered

into a contract to transfer legal title of the target housing referred to in paragraph 16, above, in return for consideration.

18. The individuals who signed the contract to purchase the target housing referred to in paragraph 16, above, became “purchasers,” as defined in 40 C.F.R. § 745.103, because they entered into a contract to purchase an interest in target housing.

19. Respondent failed to include a lead warning statement, as an attachment to the contract to sell the target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.113(a)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

20. Respondent failed to provide purchasers with the *Lead Hazard Information Pamphlet* prior to the purchasers being obligated under the contract to purchase the target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.107(a), 15 U.S.C. § 2696.

21. Respondent 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 being sold or a lack of knowledge of such presence, as an attachment to the contract to sell target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.113(a)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

22. Respondent failed to include a list of records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the purchaser or a statement that no such records or reports are available, as an attachment to the contract to sell target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.113(a)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

23. Respondent failed to include a statement by the purchasers affirming receipt of

the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, as an attachment to the agreement to sell target housing at 209 South Street, West Point, Illinois, pertaining to lead-based paint and/or lead-based paint hazards in the target housing, in violation of 40 C.F.R. § 745.113(a)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondent failed to include a statement by the purchasers that they had received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity, as an attachment to the contracts to sell target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.113(a)(5), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondent failed to include a signed statement by the purchasers and Respondent certifying to the accuracy of their statements required under 40 C.F.R. § 745.113(a)(2),(3) and (4), to the best of their knowledge, along with the dates of signature, as an attachment to the contract to sell target housing at 209 South Street, West Point, Illinois, in violation of 40 C.F.R. § 745.113(a)(7), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

26. 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 \$ 6,000.00. 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 such other matters as justice may require. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*.

27. Respondent shall pay the civil penalty either (1) in full within 30 days of the effective date of this CAFO or (2) in two equal installments, plus interest at a rate of 3% per annum for the second installment as follows. If Respondent elects to pay the civil penalty in two installments, Respondent must pay the first payment of \$3,000 within 30 days after the effective date of this CAFO and must pay the second payment of \$3,045 (which includes \$45.00 of interest) on or before August 3, 2009. Respondent shall make the payments 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, the docket number of this CAFO, and the billing document number.

28. 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-13J)
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

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

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

30. If Respondent does not pay the civil penalty in a timely manner, 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.

31. 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 payment 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.

General Provisions

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

33. 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.

34. 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.

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

Rule.

36. The terms of this CAFO bind Respondent, and his successors and assigns.

37. 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.

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

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

Phil E. Wood, Respondent

1-24-09
Date

Phil E. Wood
Phil E. Wood

United States Environmental Protection Agency, Complainant

2/12/09
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Phil E. Wood
Docket No. TSCA-05-2009-0006

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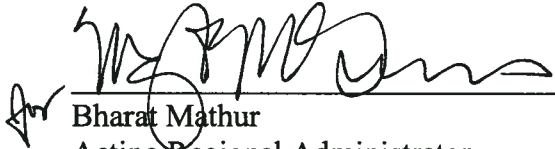
Final Order

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PROTECTION AGENCY

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.

2/13/09

Date



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 Phil E. Wood, was filed on February 17, 2009, with the Regional Hearing Clerk (E-13J), 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 0183 0029, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Phil E. Wood
301 South Street
West Point, Illinois 62380

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Randa Bishlawi, 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-05-2009-0006

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