



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

MAR 15 2010

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0192 2625

Roger T. Conners
5170 Serenade Drive
Cincinnati, Ohio 45238

Roger G., Roger T. and Deborah Conners TSCA-05-2010-0009

Dear Mr. Conners:

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 15, 2010, with the Regional Hearing Clerk.

The Respondents were assessed no civil penalty for these violations based on an inability to pay analysis, based on the results of the Indipay model described in paragraph 28.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela Grace", with a small "pn" monogram at the end.

Pamela Grace
Pesticides and Toxic Compliance Section

Enclosures

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

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2010-0009
)	
Roger G., Roger T. and Deborah Connors)	Proceeding to Assess a Civil
Cincinnati, Ohio,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondents.)	15 U.S.C. § 2615(a)
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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. Respondents are Roger G., Roger T. and Deborah Connors, individuals doing business in the State of Ohio.
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 and factual allegations in this CAFO.
8. Respondents waive 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. § 745.113(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 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 from July 29, 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

17. Between at least January 1, 2005, and March 12, 2007, Respondents Roger G. Conners, Roger T. Conners and Deborah Conners, either individually or jointly, owned residential apartment buildings located in Cincinnati, Ohio (Respondents' properties).

18. Respondents' properties were constructed prior to 1978.

19. Respondents' properties and each apartment unit within Respondents' properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On the following dates, Respondent Deborah Conners, either directly or through her authorized agent, entered into the following 23 written lease agreements (contracts) with

individuals for the lease of units in Respondents' apartment buildings:

Address	Unit #	Date of Lease
1788 Grand Avenue, Cincinnati, Ohio	1	December 1, 2006
1788 Grand Avenue, Cincinnati, Ohio	10	December 1, 2006
1790 Grand Avenue, Cincinnati, Ohio	A3	January 3, 2006
1790 Grand Avenue, Cincinnati, Ohio	A9	February 1, 2007
1790 Grand Avenue, Cincinnati, Ohio	B2	February 22, 2007
1790 Grand Avenue, Cincinnati, Ohio	B6	March 1, 2007
1790 Grand Avenue, Cincinnati, Ohio	B7	November 1, 2006
1790 Grand Avenue, Cincinnati, Ohio	C4	February 21, 2007
3050 Mickey Avenue, Cincinnati, Ohio	1	September 1, 2006
3050 Mickey Avenue, Cincinnati, Ohio	2	January 1, 2006
3050 Mickey Avenue, Cincinnati, Ohio	29	February 28, 2007
3405 Lehman Avenue, Cincinnati, Ohio	1	March 1, 2006
3405 Lehman Avenue, Cincinnati, Ohio	2	March 1, 2006
3405 Lehman Avenue, Cincinnati, Ohio	3	March 1, 2007
3759 West Liberty Street, Cincinnati, Ohio	1	March 5, 2007
3759 West Liberty Street, Cincinnati, Ohio	2	March 4, 2007
3759 West Liberty Street, Cincinnati, Ohio	3	February 22, 2007
3777 West Liberty Street, Cincinnati, Ohio	3	March 5, 2007
4105 West Eighth Street, Cincinnati, Ohio	4	March 5, 2007
4129 West Eighth Street, Cincinnati, Ohio	2	January 1, 2005
4173 Pleasure Drive, Cincinnati, Ohio	1	February 1, 2005
4173 Pleasure Drive, Cincinnati, Ohio	3	March 1, 2007
4648 Rapid Run, Cincinnati, Ohio	1	March 12, 2007

21. Each of the 23 contracts referred to in paragraph 20, above, covered a term of occupancy greater than 100 days.

22. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they

offered the target housing referred to in paragraph 20, above, for lease.

23. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 20, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

Counts 1 - 23

24. 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 Respondents’ properties at: 1788 Grand Avenue, #1; 1788 Grand Avenue, #10; 1790 Grand Avenue, #A3; 1790 Grand Avenue, #A9; 1790 Grand Avenue, #B2; 1790 Grand Avenue, #B6; 1790 Grand Avenue, #B7; 1790 Grand Avenue, #C4; 3050 Mickey Avenue, #1; 3050 Mickey Avenue, #2; 3050 Mickey Avenue, #29; 3405 Lehman Avenue, #1; 3405 Lehman Avenue, #2; 3405 Lehman Avenue, #3; 3759 West Liberty Street, #1; 3759 West Liberty Street, #2; 3759 West Liberty Street, #3; 3777 West Liberty Street, #3; 4105 West Eighth Street, #4; 4129 West Eighth Street, #2; 4173 Pleasure Drive, #1; 4173 Pleasure Drive, #3; and 4648 Rapid Run, #1, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 24 - 46

25. Respondents’ failed to include a list of any records or reports available to the lessors 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 Respondents’ properties at: 1788 Grand Avenue, #1; 1788 Grand Avenue, #10; 1790 Grand Avenue, #A3; 1790 Grand Avenue,

#A9; 1790 Grand Avenue, #B2; 1790 Grand Avenue, #B6; 1790 Grand Avenue, #B7; 1790 Grand Avenue, #C4; 3050 Mickey Avenue, #1; 3050 Mickey Avenue, #2; 3050 Mickey Avenue, #29; 3405 Lehman Avenue, #1; 3405 Lehman Avenue, #2; 3405 Lehman Avenue, #3; 3759 West Liberty Street, #1; 3759 West Liberty Street, #2; 3759 West Liberty Street, #3; 3777 West Liberty Street, #3; 4105 West Eighth Street, #4; 4129 West Eighth Street, #2; 4173 Pleasure Drive, #1; 4173 Pleasure Drive, #3; and 4648 Rapid Run, #1, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 47 – 69

26. 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 Respondents' properties at: 1788 Grand Avenue, #1; 1788 Grand Avenue, #10; 1790 Grand Avenue, #A3; 1790 Grand Avenue, #A9; 1790 Grand Avenue, #B2; 1790 Grand Avenue, #B6; 1790 Grand Avenue, #B7; 1790 Grand Avenue, #C4; 3050 Mickey Avenue, #1; 3050 Mickey Avenue, #2; 3050 Mickey Avenue, #29; 3405 Lehman Avenue, #1; 3405 Lehman Avenue, #2; 3405 Lehman Avenue, #3; 3759 West Liberty Street, #1; 3759 West Liberty Street, #2; 3759 West Liberty Street, #3; 3777 West Liberty Street, #3; 4105 West Eighth Street, #4; 4129 West Eighth Street, #2; 4173 Pleasure Drive, #1; 4173 Pleasure Drive, #3; and 4648 Rapid Run, #1, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 70 - 92

27. Respondents failed to include the signatures of the lessor(s) and 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 Respondents' properties at: 1788 Grand Avenue, #1; 1788 Grand Avenue, #10; 1790 Grand Avenue, #A3; 1790 Grand Avenue, #A9; 1790 Grand Avenue, #B2; 1790 Grand Avenue, #B6; 1790 Grand Avenue, #B7; 1790 Grand Avenue, #C4; 3050 Mickey Avenue, #1; 3050 Mickey Avenue, #2; 3050 Mickey Avenue, #29; 3405 Lehman Avenue, #1; 3405 Lehman Avenue, #2; 3405 Lehman Avenue, #3; 3759 West Liberty Street, #1; 3759 West Liberty Street, #2; 3759 West Liberty Street, #3; 3777 West Liberty Street, #3; 4105 West Eighth Street, #4; 4129 West Eighth Street, #2; 4173 Pleasure Drive, #1; 4173 Pleasure Drive, #3; and 4648 Rapid Run, #1, 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

28. 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 Respondents, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007. Complainant determined that Respondents do not have the ability to pay a penalty in this matter.

General Provisions

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

30. 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.

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

32. Respondents certify that they are complying with the Lead Act and the Disclosure Rule.

33. This CAFO constitutes a "history of prior violations" as that term is used in EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* to determine Respondents' "history of prior such violations" under Section 16(a) of TSCA, 42 U.S.C. § 2615(a).

34. The terms of this CAFO bind Respondents and their successors and assigns.

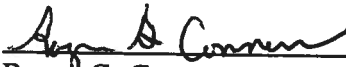
35. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

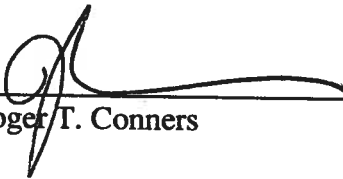
37. This CAFO constitutes the entire agreement between the parties.

Roger G., Roger T. and Deborah Conners, Respondents


2-11-10
Date


Roger G. Conners

2-11-2010
Date

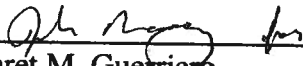

Roger T. Conners

2-11-2010
Date


Deborah Conners

United States Environmental Protection Agency, Complainant

3/10/10
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Roger G., Roger T. and Deborah Connors
Docket No. TSCA-05-2010-0009

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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.

3/11/10
Date

Walter W. Kovaluk
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 19 2010
OFFICE OF REGIONAL
COUNSEL

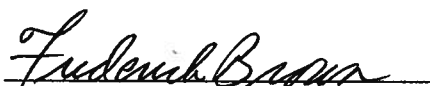
CERTIFICATE OF SERVICE

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 Berry-Gibson Properties, LLC, was filed on March 15, 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 2625 to:

Mr. Roger T. Conners
5170 Serenade Drive
Cincinnati, Ohio 45238

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery M Trevino, 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-05-2010-0009

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