



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

DEC 13 2007

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 7835

Mr. David Schoolenberg
Twohey Maggini, P.L.C.
212 Waters Building
161 Ottawa Avenue, N.W.
Grand Rapids, Michigan 49503

Consent Agreement and Final Order, Docket No. **TSCA-05-2008-0003**

Dear Mr. Schoolenberg:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case and a copy for your client Mr. Marshall Redder. This document was filed on December 13, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$804 is to be paid in the manner prescribed in paragraphs 97, 98 and 99. Also please be aware that the address check is to be sent has change, the new address is US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000

Please be certain that the number **BD 2750847X002** and the docket number are written on both the transmittal letter and on the check. Payment is due by January 14, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Susan Perdomo, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

the issuance of a Consent Agreement and Final Order (CAFO) pursuant to § 22.18(b)(2) and (3). 40 C.F.R. §22.13(b).

5. The parties agree that settling this action before 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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Statutory and Regulatory Background

7. In enacting Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6. At low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

8. On March 6, 1996, U.S. EPA and HUD promulgated regulations at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, respectively, “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.

9. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the lease of target housing.

10. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978.

11. 40 C.F.R. § 745.103 defines “owner” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individual, partnerships, corporations, trust, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.103 defines “lessor” as any individual that offers target housing for lease, rent, or sublease.

13. 40 C.F.R. § 745.103 defines “lessee” as any individual that enters into an agreement to lease, rent or sublease target housing.

14. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or 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. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a purchaser or lessee is obligated under any contract to buy or lease target housing.

16. 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 lack of knowledge of such presence; 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 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 signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

17. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to U.S. EPA administrative civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

General Allegations

18. Paragraphs 1 through 17, above, are realleged and incorporated here by reference.

19. Between at least February 9, 2005 and May 5, 2006, Respondent owned the following three residential rental properties in Muskegon, Michigan and two residential rental properties in Grand Rapids, Michigan, located at the following addresses, respectively: 1264 5th Street (Muskegon), 1785 Dyson (Muskegon), 2413 Leahy(Muskegon); 1061 Dunham S.E. (Grand Rapids) and 111 Diamond S.E. (Grand Rapids) (referred to individually as “Residential Rental Property” and collectively as the “Residential Rental Properties”).

20. Each Residential Rental Property was constructed prior to 1978.
21. Each Residential Rental Property and each rental unit within such property is “target housing” as defined in 40 C.F.R. § 745.103.
22. On July 31, 2006, Complainant issued an Information Request Letter (IRL) to Marshall Redder, to monitor compliance with Section 1018 and its implementing regulations found at 40 C.F.R. Part 745, Subpart F, seeking, among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at Residential Rental Properties owned and/or managed by Marshall Redder from July 1, 2003 through date of submittal.
23. On September 20, 2006 and December 27, 2006, Respondent provided Complainant with documents responsive to the IRL referenced in paragraph 22, above, including information identifying Respondent as owner of the Residential Rental Properties.
24. On June 19, 2000, the property located at 1061 Dunham S.E., Grand Rapids, Michigan, was inspected by the Environmental Health Division of the Kent County Health Department. The request was made by the Kent County Health Department, Nursing Division, to investigate a case of lead poisoning for a tenant at the aforementioned address. The Respondent was notified by Certified Letter on June 20, 2000, that the residence posed “a threat to human health through the presence of lead-based paint.” The Certified Letter issued to the Respondent provided him with knowledge regarding the condition of his property and the presence of lead-based paint and/or lead-based paint hazards.

25. On September 14, 2006, Respondent was notified by the Muskegon County Michigan Health Department that the property located at 1785 Dyson Muskegon, Michigan, underwent a lead based paint hazard screen and that the presence of lead was confirmed at the property. The Certified Letter issued to the Respondent provided him with knowledge regarding the condition of his property and the presence of lead-based paint and/or lead-based paint hazards.

26. On January 29, 2004, the property located at 111 Diamond Avenue S.E., Grand Rapids, Michigan, was inspected by the Kent County Health Department. The request was made by the Childhood Lead Poisoning Prevention Program to investigate a case of lead poisoning for a child at the aforementioned address. The Respondent was notified by Certified Letter on January 29, 2004, that the residence posed “a threat to human health through the presence of lead-based paint.” The Certified Letter issued to the Respondent provided him with knowledge regarding the condition of his property and the presence of lead-based paint and/or lead-based paint hazards.

27. Respondent, either directly or through Respondent’s authorized agent entered into the following five written rental agreements (“rental Contracts”) with individuals for the lease of units in the Residential Rental Properties identified below:

Address	Unit	Date of Lease
1264 5 th Street	Upper	02/07/2006
1061 Dunham S.E.	House	03/09/2004
1785 Dyson	House	03/22/2004
1785 Dyson	House	11/02/2005
2413 Leahy	House	05/05/2005

28. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, since he has offered the target housing referenced in paragraph 27, above, for lease.

29. Between March 9, 2004 and May 5, 2006, Respondent as the lessor of the

Residential Rental Properties offered for lease units in its Residential Rental Properties, and individuals entered into contracts on the dates listed in paragraph 27, above, to lease those units.

30. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Residential Rental Properties, became a "lessee," as defined in 40 C.F.R. § 745.103, since he or she entered into a agreement to lease target housing.

31. Respondent, as the owner of target housing, transferred legal title to two of the Residential Rental Properties by entering into written sales agreements ("Sales Contracts") with individuals on the dates indicated below:

Address	Unit	Date of Sale
1061 Dunham S.E.	House	12/28/2005
111 Diamond S.E.	House	04/15/2005

32. Respondent is "seller," as defined by 40 C.F.R. § 745.103, since he has transferred legal title to target housing, referenced in the table in paragraph 31, above.

33. Each individual who entered into an agreement to purchase an interest in the target housing referenced in the table in paragraph 31 above, is a "purchaser," as defined in 40 C.F.R. § 745.103.

34. On April 4, 2007, U.S. EPA advised Respondent by letter that U.S. EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. U.S. EPA asked Respondent to submit specific financial documents, if he believed U.S. EPA should consider information on Respondent's ability to pay a penalty. If Respondent believed there were financial

factors which bore on Respondent's ability to pay a civil penalty, U.S. EPA asked Respondent to submit specific financial documents.

35. On April 9, 2007, Respondent received the pre-filing letter referenced in paragraph 34, above. Respondent has not claimed an inability to pay a penalty and did not provide facts or other information concerning an ability to pay a penalty.

36. The Chief of the Pesticides and Toxics Branch has determined that the Respondent has violated the Federal regulations regarding the disclosure of lead-based paint and/or lead-based paint hazards, 40 C.F.R. Part 745, and therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 1: Failure to Include a Lead Warning Statement in Rental Contracts

37. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

38. 40 C.F.R. § 745.113(b)(1) and 40 C.F.R. § 745.100 require, before a lessee is obligated under the contract to lease target housing, that the lessor include, within or as an attachment to each contract to lease target housing, a Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

39. Count 1: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 2413 Leahy, Muskegon, Michigan, was obligated under the May 5, 2005 contract referenced in paragraph 27,

above.

40. Respondent's failure to include, within or as an attachment to each contract, a Lead Warning Statement, before the lessee was obligated under the contract referenced in paragraphs 39, above, constitutes one violations of 40 C.F.R. § 745.113(b)(1), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 2-4: Failure to Include a Lead Disclosure Statement in Rental Contracts

41. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

42. 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 require a lessor to include, within or as an attachment to each contract to lease target housing, a statement disclosing 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, before a lessee is obligated under the contract to lease target housing. Additionally, 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 require that, before a lessee is obligated under a contract to lease target housing, a lessor must disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards.

43. Count 2: Respondent failed to disclose to the lessee at 1061 Dunham S.E., Grand Rapids, Michigan additional available information concerning known lead-based paint and/or lead-based paint hazards before the lessee was obligated under the March 9, 2004 contract referenced in paragraph 27, above.

44. Count 3: Respondent failed to disclose to the lessee at 1785 Dyson, Muskegon, Michigan additional available information concerning known lead-based

paint and/or lead-based paint hazards before the lessee at was obligated under the March 22, 2004 contract referenced in paragraph 27, above.

45. Count 4: Respondent failed to include, within or as an attachment to the contract, 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, before the lessee at 2413 Leahy, Muskegon, Michigan, was obligated under the May 5, 2005 contract referenced in paragraph 21, above.

46. Respondent's failure to include, within or as an attachment to each contract, 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, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 43 through 45, above, constitute three violations of 40 C.F.R. § 745.113(b)(2), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 5-8: Failure to Include in Rental Contracts a List of Records or Statement that No Such Records Exist

47. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

48. 40 C.F.R. Part § 745.113(b)(3) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to each contract to lease target housing, 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, or a statement that no such records exist, before a lessee is obligated under a contract to lease target housing.

49. Count 5: Respondent failed to include, within or as an attachment to the

contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the March 9, 2004 contract referenced in paragraph 27, above.

50. Count 6: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 1785 Dyson, Muskegon, Michigan, was obligated under the March 22, 2004 contract referenced in paragraph 27, above.

51. Count 7: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 1785 Dyson, Muskegon, Michigan, was obligated under the November 10, 2005 contract referenced in paragraph 27, above.

52. Count 8: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 2413 Leahy, Muskegon, Michigan, was obligated under the May 5, 2005 contract referenced in paragraph 27, above.

53. Respondent's failure to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessees were obligated under the

contracts for each of the leasing transactions referenced in paragraphs 49 through 52, above, constitutes four violations of 40 C.F.R. § 745.113(b)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 9-12: Failure to Include Statement of Receipt of Lead Hazard Information and Pamphlet in Rental Contracts

54. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

55. 40 C.F.R. § 745.113(b)(4) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee is obligated under a contract to lease target housing.

56. Count 9: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) before the lessee at 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the March 9, 2004 contract referenced in paragraph 27, above.

57. Count 10: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) before the lessee at 1785 Dyson, Muskegon, Michigan, was obligated under the March 22, 2004 contract referenced in paragraph 27, above.

58. Count 11: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) before the lessee at 1785 Dyson, Muskegon, Grand Rapids,

Michigan, was obligated under the November 2, 2005 contract referenced in paragraph 27, above.

59. Count 12: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) before the lessee at 2413 Leahy, Muskegon, Michigan, was obligated under the May 19, 2005 contract referenced in paragraph 27, above.

60. Respondent's failure to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 56 through 59, above, constitutes four violations of 40 C.F.R. § 45.113(b)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 13-17: Failure to Include Certifying Signatures in Rental Contracts

61. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

62. 40 C.F.R. § 745.113(b)(6) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee is obligated under a contract to lease target housing.

63. Count 13: Respondent failed to include, either within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of

their statements along with the dates of such signature before the lessee at 1264 5th Street, Upper, Muskegon, Michigan, was obligated under the February 7, 2006 contract referenced in paragraph 27, above.

64. Count 14: Respondent failed to include, either within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the March 9, 2004 contract referenced in paragraph 27, above.

65. Count 15: Respondent failed to include, either within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 1785 Dyson, Muskegon, Michigan, was obligated under the March 22, 2004 contract referenced in paragraph 27, above.

66. Count 16: Respondent failed to include, either within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 1785 Dyson, Muskegon, Michigan, was obligated under the November 2, 2005 contract referenced in paragraph 27, above.

67. Count 17: Respondent failed to include, either within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2413 Leahy, Muskegon, Michigan, was obligated under the May 5, 2005 contract referenced in paragraph 27, above.

68. Respondent's failure to include, either within or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 63 through 67, above, constitutes five violations of 40 C.F.R. § 745.113(b)(6), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 18-19: Failure to Include a Lead Disclosure Statement in Sales Contracts

69. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

70. 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.100 require a seller to include, as an attachment to each contract to sell target housing, a statement disclosing 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, before a purchaser is obligated under the contract to purchase target housing. Additionally, 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.100 require that, before a purchaser is obligated under a contract to purchase target housing, a seller must disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards.

71. Count 18: Respondent failed to disclose additional available information concerning known lead-based paint and/or lead-based paint hazards before the purchaser at 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the December 28, 2005 contract referenced in paragraph 31, above.

72. Count 19: Respondent failed to disclose additional available information concerning known lead-based paint and/or lead-based paint hazards before the purchaser

at 111 Diamond S.E., Grand Rapids, Michigan, was obligated under the April 15, 2005 contract referenced in paragraph 31, above.

73. Respondent's failure to include, as an attachment to each sale contract, 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, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 71 and 72, above, constitutes two violations of 40 C.F.R. § 745.113(a)(2), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 20-21: Failure to Include a List of Records or Statement that No Records Exist in Sales Contracts

74. Paragraphs 1 through 36, above are realleged and incorporated here by reference.

75. 40 C.F.R. Part § 745.113(a)(3) and 40 C.F.R. § 745.100 require the seller to include, as an attachment to each contract to sell target housing, a list of any records or reports available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist, before a purchaser is obligated under a contract to purchase target housing.

76. Count 20: Respondent failed to include, as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchaser at 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the December 28, 2005 contract referenced in paragraph 31, above.

77. Count 21: Respondent failed to include, as an attachment to the contract, a list

of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchaser at 111 Diamond S.E., Grand Rapids, Michigan, was obligated under the April 15, 2005 contract referenced in paragraph 31, above.

78. Respondent's failure to include, as an attachment to each contract to sell target housing, a list of any records or reports available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 76 and 77, above, constitutes two violations of 40 C.F.R. § 745.113(a)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 22-23: Failure to Include Statement of Receipt of Lead Hazard Information and Pamphlet in Sales Contracts

79. Paragraphs 1 through 36 of this Complaint are incorporated here by reference.

80. 40 C.F.R. § 745.113(a)(4) and 40 C.F.R. § 745.100 require the seller to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet before the purchaser is obligated under a contract to purchase target housing.

81. Count 22: Respondent failed to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3) before the purchaser of 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the December 28, 2005 contract referenced in paragraph

31, above.

82. Count 23: Respondent failed to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3) before the purchaser of 111 Diamond S.E., Grand Rapids, Michigan, was obligated under the April 15, 2005 contract referenced in paragraph 31, above.

83. Respondent's failure to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3) before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 81 and 82, above, constitutes two violations of 40 C.F.R. § 745.113(a)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 24: Failure to Include Statement Concerning Opportunity for Risk Assessment and/or Inspection in Sales Contracts

84. Paragraphs 1 through 36, above, are realleged and incorporated here by reference.

85. 40 C.F.R. § 745.113(a)(5) and 40 C.F.R. § 745.100 require that the seller must include, as an attachment to the contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before a purchaser is obligated under a contract to buy target housing.

86. Count 24: Respondent failed to include, as an attachment to the contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the

opportunity before the purchaser of 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the December 28, 2005 contract referenced in paragraph 31, above.

87. Respondent's failure to include, as an attachment to each contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before the purchasers were obligated under the contract referenced in paragraph 36, above, constitutes one violation of 40 C.F.R. § 745.113(a)(5), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 25-26: Failure to Include Certifying Signatures in Sales Contracts

88. Paragraphs 1 through 36 of this Complaint are incorporated here by reference.

89. 40 C.F.R. § 745.113(a)(7) and 40 C.F.R. § 745.100 require the seller to include, as an attachment to the contract, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, before the purchaser is obligated under a contract to purchase target housing.

90. Count 25: Respondent did not include, as an attachment to the contract, the signatures of the sellers, agent, and purchasers certifying to the accuracy of their statements, along with the dates of such signature, before the purchaser of 1061 Dunham S.E., Grand Rapids, Michigan, was obligated under the December 28, 2005 contract referenced in paragraph 31, above.

91. Count 26: Respondent did not include, as an attachment to the contract, the signatures of the sellers, agent, and purchasers certifying to the accuracy of their

statements, along with the dates of such signature, before the purchaser of 111 Diamond S.E., Grand Rapids, Michigan, was obligated under the April 15, 2005 contract referenced in paragraph 31, above.

92. Respondent's failure to include, as an attachment to each contract, the signatures of the seller, agent, and purchaser certifying to the accuracy of their statement along with the dates of such signatures, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 90 and 91, above, constitutes two violations of 40 C.F.R. § 745.113(a)(7), 40 C.F.R. § 745.100, 42 U.S.C. § 2680.

Penalty Calculation

93. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852D(B)(5), and 40 C.F.F. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C.F.R. § 19.2 (61 Fed. Reg. 69361 [1996]).

94. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violation alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

95. Respondent certifies that he has instituted new procedures for ensuring compliance with U.S. EPA's lead paint disclosure requirements and regulation.

Specifically, Respondent agrees to use lead paint disclosure forms applicable to leases when entering a lease transaction with a tenant and will use sale transaction lead paint disclosure forms when selling a property. In addition, Respondent will ensure that tenants sign and date the lead paint disclosure form on the date that the lease is executed; that a list of documents provided at the time of disclosure are attached to or identified in the lead paint disclosure form; and that all records concerning the current or previous existence of lead paint in the premises will be provided to the tenant, including any correspondence from the Health Department indicating the completion of repairs. In consideration of Respondent's cooperation in resolving this matter and other factors as justice may require, U.S. EPA agrees to mitigate the proposed penalty from \$11,480 to \$8,036.

96. In consideration of Respondent's agreement to perform the Window Replacement Project specified in paragraphs 102 to 113 below, U.S. EPA agrees to further mitigate the penalty of \$8,036 to \$804.

97. Respondent shall pay the \$804 civil penalty by cashier's or certified check payable to the "*Treasurer, United States of America,*" within 30 days after the effective date this CAFO.

98. Respondent shall send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

99. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent shall write the case docket number and the BD number on

the face of the check. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies 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 (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Susan Perdomo (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

100. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraph 111, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

101. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

Window Replacement Project and Lead Clearance Sampling

102. Within four months after entry of this CAFO, Respondent must complete a

Window Replacement Project and lead clearance sampling designed to protect tenants from potential lead-based paint hazards by replacing 17 exterior windows and three doors in the rental property at 506 Woodlawn Avenue, S.E., Grand Rapids, Michigan, and shall submit the reports required by paragraph 108 at the end of this four month period.

103. The Window Replacement Project must be conducted in compliance with the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws and regulations.

104. Respondent must perform standard lead clearance testing upon completion of the Window Replacement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws, in the property listed in paragraph 102, above. The standard lead clearance sampling shall not be performed by the same individual or entity conducting the Windows Replacement Project.

105. Respondent must spend at least \$7,232 to complete the Window Replacement Project and lead clearance sampling.

106. Respondent certifies that Respondent is not required to perform the Window Replacement Project by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date Respondent signs this CAFO. Respondent further certifies that Respondent has not received, and is not negotiating to

reserve, credit for the Window Replacement Project in any other enforcement action.

107. U.S. EPA may inspect the property at any time to monitor Respondent's compliance with this CAFO's requirements. Any access to the building or units therein will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

108. Respondent must submit a Window Replacement project report and lead clearance sampling report upon completion of the Window Replacement Project for the property listed in paragraph 102 above, within four months following entry of the CAFO. These reports must contain the following information:

- a. a description of the Window Replacement Project as completed at the property reference in paragraph 102 above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property referenced in paragraph 102, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services: including receipts for the cost of the lead based paint inspection conducted to identify the lead-based paint and/or lead-based paint hazards in the building;
- d. itemized costs of services used to complete the lead clearance sampling documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;
- e. provide documentation that the individuals who performed the Window Replacement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local law and regulations;
- f. certification that Respondent has completed the Window Replacement Project and the lead clearance sampling in compliance with this CAFO; and
- g. statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the Window Replacement Project and lead clearance sampling.

109. Respondent must submit all notices and reports required by the CAFO by first class mail to Estrella Calvo, at the address in paragraph 99, above.

110. In each report that Respondent submits as provided by this CAFO, Respondent or Respondent's authorized representative must certify that the report is true and complete by including the following statement signed by the Respondent.

I certify that I am familiar with the information in this document and that based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

111. If Respondent violates any requirements of this CAFO relating to the Window Replacement Project and sampling, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent does not complete the Window Replacement Project and lead clearance sampling according to this CAFO, Respondent must pay a stipulated penalty of \$8,036;
- b. If Respondent satisfactorily completes the Window Replacement Project and lead clearance sampling according to this CAFO, but spends less than \$8,036, Respondent must pay the difference between \$8,036 and the actual amount spent;
- c. If Respondent fails to ensure and document that lead clearance sampling work for the property listed in paragraph 102, above, is executed by individuals certified to perform such work in accordance with 40 C.F.R. Part 745 and applicable state and local laws and regulations, Respondent shall pay a stipulated penalty of \$4,018.
- d. If Respondent fails to ensure and document that the Window Replacement Project complies with the requirements of paragraphs 102 to 105, above, Respondent shall pay a stipulated penalty of \$4,018; and
- e. If Respondent fails to submit timely the Window Replacement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 108, above, or if Respondent fails to

satisfactorily address each requirement in the window replacement completion report paragraphs of the CAFO, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$8,036.

112. U.S. EPA's reasonable and good faith determination of whether the Respondent satisfactorily completed the Window Replacement Project and lead clearance sampling and whether they made good faith, timely efforts to complete the Window Replacement Project and lead clearance sampling will bind Respondent for the purposes of this CAFO.

113. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the method of payment specified in paragraphs 97 through 99, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

Terms of Settlement

114. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor deny the factual allegations in this CAFO.

115. 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.

116. Respondent certifies that, as of the effective date of this CAFO, it is in full compliance with the requirements of 40 C.F.R. Part 745, Subpart F, and intends to continued to comply fully with 40 C.F.R. Part 745, Subpart F.

117. The parties consent to the terms of this CAFO.

118. This CAFO settles U.S. EPA's claims for civil penalties for violations the alleged herein.

119. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

120. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

121. The terms of the CAFO bind the Respondent and its assigns.

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

123. Each party agrees to bear its own costs and fees in this action.

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

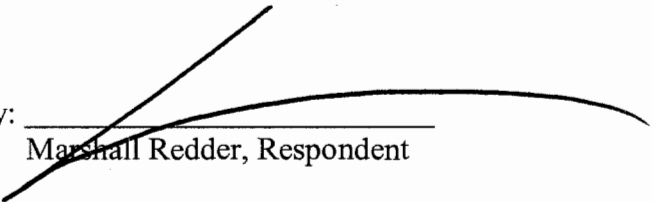
125. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA Region 5.

**Consent Agreement and Final Order
In the Matter of: Marshall Redder**

Docket No. _ TSCA-05-2008-0003


For Respondent:

Date: 11/14/07

By: 
Marshall Redder, Respondent

For Complainant:

Date: 12/05/07

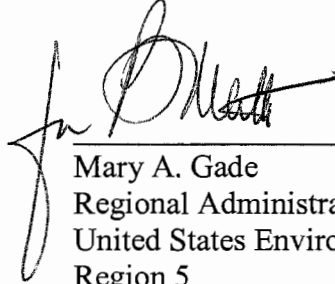
By: 
Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of: Marshall Redder
Docket No. - TSCA-05-2008-0003

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk, IT IS SO ORDERED.

Date: 12-9-07



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

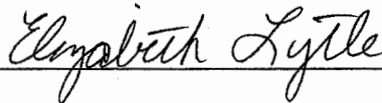
I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Marshall Redder, was filed on December 13, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 7835, a copy of the original to the Respondent and Respondent's Attorney:

Mr. Marshall Redder
c/o Mr. David Schoolenberg
Twohey Maggini, P.L.C.
212 Waters Building
161 Ottawa Avenue, N.W.
Grand Rapids, Michigan 49503

Mr. David Schoolenberg
Twohey Maggini, P.L.C.
212 Waters Building
161 Ottawa Avenue, N.W.
Grand Rapids, Michigan 49503

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2008-0003**

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