



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

September 26, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7668 0691

Mr. Archie W. Skidmore
Skidmore & Associates
PNC Center
One Cascade Plaza, 12th Floor
Akron, Ohio 44308

Consent Agreement and Final Order In the Matter of
Cindy Draher, LLC, Docket No. TSCA-05-2012-0001

Dear Mr. Skidmore:

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 September 26, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$19,770.00 is to be paid in the manner described in paragraphs 33 through 35. Please be certain that the number **BD 2751267X025** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 26, 2012 (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 "Julie Morris".

Julie Morris
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Jeffery M. Trevino, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. TSCA-05-2012-0001
)	
Cindy Draher,)	Proceeding to Assess a Civil
Akron, Ohio,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Cindy Draher, a person doing business in the State of Ohio, and the Owner of C & D Properties, 99 North College Street, Akron, Ohio, 44304, a 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. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

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

Statutory and Regulatory Background

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

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

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

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

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

14. 40 C.F.R. § 745.103 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, 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 between July 28, 1997, and January 12, 2009, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations

18. On the following dates Respondent entered into a lease agreement (contract) with a

person for a single-family dwelling at the following location.

<u>Date of Lease</u>	<u>Address</u>
May 1, 2007.	180 Kenwood, Akron, Ohio.
August 1, 2007.	523 Edgewood, Akron, Ohio.
December 10, 2007.	161 Portage Path, Akron, Ohio.
January 11, 2008.	824 Stadleman, Akron, Ohio.
June 1, 2008.	904 Aberdeen, Akron, Ohio.
September 18, 2008.	200 Kenwood Avenue, Akron, Ohio.
September 18, 2008.	4 Manila Place, Akron, Ohio.
November 1, 2008.	1027 Diagnol Road, Akron, Ohio.
January 30, 2009.	1298 South Hawkins, Akron, Ohio.
February 1, 2009.	1001 Dover, Akron, Ohio.
April 2, 2009.	378 Thornton, Akron, Ohio.
May 1, 2009.	206 Denver, Akron, Ohio.
May 15, 2009.	847 5 th Avenue, Akron, Ohio.
June 15, 2009.	1294 South Hawkins, Akron, Ohio.

19. Between May 1, 2007, and June 15, 2009, Respondent owned and operated each single-family dwelling.

20. Between May 1, 2007, and June 15, 2009, each single-family dwelling was a “residential dwelling,” as defined at 40 C.F.R. § 745.103.

21. Each residential dwelling was built prior to 1978.

22. Therefore, each residential dwelling was “target housing” as defined at 40 C.F.R.

§ 745.103.

23. Each of the contracts covered a term of occupancy greater than 100 days.

24. Therefore, Respondent was a “lessor,” as defined at 40 C.F.R. § 745.103.

25. Each person who signed a lease to pay rent in exchange for occupancy of the target housing was a “lessee” as defined at 40 C.F.R. § 745.103.

26. Respondent failed to include a lead warning statement, either within the contracts or as an attachment to the contracts for the lease of its target housing, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. 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 or a lack of knowledge of such presence, either within the contracts or as an attachment to the contracts for the lease of its target housing, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contracts or as an attachment to the contracts for the lease of its target housing, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. Respondent 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 contracts or as an attachment to the contracts for the lease of its target housing, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondent failed to include the signatures of the lessor, or her agent, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contracts or as an attachment to the contracts for the lease of target housing, 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

CD 31. 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 \$19,770.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the alleged 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 Respondent's agreement to perform a supplemental environmental project. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

CD 32. Respondent must pay the \$19,770.00 civil penalty in four equal installments with interest, at the current interest rate of 1% annum, as established by the U.S. Department of Treasury, as follows: 1) 30 days after the effective date of the CAFO, Respondent must pay \$4,925.50; 2) 120 days after the effective date of this CAFO, Respondent must pay \$4,937.50; 3) 210 days after the effective date of this CAFO, Respondent must pay \$4,950.50; and, 4) 300 days after the effective date of this CAFO, Respondent must pay \$4,962.50.

33. Respondent must pay each of the installments by sending cashier's or certified checks, payable to "Treasurer, United States of America," to:

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

34. Each of the four cashier's or certified checks must state Respondent's name, address, case title, case docket number, and the billing docket number for this CAFO.

35. Respondent must include with each cashier's or certified check a transmittal letter stating Respondent's name, address, case title, case docket number, and the billing document number. Respondent must send a copy of each check and transmittal letter to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Julie Morris (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

37. If Respondent does not pay an installment payment as set forth above, the entire unpaid balance of the civil penalty, and any other amount required by this CAFO, will become due and owing upon written notice of EPA to Respondent. 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.

38. 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..

Supplemental Environmental Project

39. Respondent must complete by September 15, 2013, a Supplemental Environmental Project (SEP) of Lead-Based Paint Hazard Abatement (“LBPH Abatement Project”) at 378 Thornton Avenue, and 1027 Diagonal Road, Akron, Ohio, and designed to protect public health and the environment.

40. Respondent’s SEP is designed to protect lessees from direct contact with lead-based paint or dust contaminated with lead-based paint by (a) replacing all windows, (b) replacing the front door and jamb, (c) and removing paint from the front porch and repainting with lead-free paint.

CD 41. Respondent must expend at least \$18,000.00 on its SEP.

42. The parties agree that the total cost of the SEP includes the entire cost of all services provided by the certified contractors, including those post abatement costs as described below, and all costs and expenses incurred by Respondent and her contractors to purchase all materials and supplies necessary to complete the abatement.

43. Respondent certifies as follows:

I certify that I, Cindy Draher, am not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that I have not received, and am not negotiating to receive, credit for the SEP in any other enforcement

action.

I certify that I am not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO. For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

44. Respondent must conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Ohio, unless otherwise specifically provided in this CAFO.

45. EPA may inspect the residential properties at 378 Thornton Avenue, Akron Ohio, and 1027 Diagonal Road, Akron, Ohio, at any time to monitor Respondent’s compliance with this CAFO’s SEP requirements.

46. Respondent must submit to EPA by October 15, 2013, an SEP Completion Report which must contain the following information.

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and,

- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

47. Respondent must submit all required reports and notices by first class U.S. Mail to Julie Morris of the Pesticides and Toxics Compliance Section at the address provided above.

48. Respondent must certify that all reports are true and complete by including the following signed statement:

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, it 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.

49. Upon receipt of Respondent's SEP Report, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP Report; or,
- b. There are deficiencies in the SEP as completed or in the SEP Report and EPA will give Respondent 30 days to correct the deficiencies; or,
- c. Respondent has not satisfactorily completed the SEP or the SEP Report and EPA will seek stipulated penalties as noted below.

50. If EPA exercises option b., above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States as noted below.

51. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$18,000.00.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it spent at least 90 percent of the amount set forth for the SEPS, Respondent will not be liable for any stipulated penalty under subparagraph a above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth for the SEPs, Respondent must pay a penalty of \$1800.00.
- d. If Respondent did not submit timely the SEP Completion Report, or any other report required by this CAFO, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$100.00	1 st through 14 th day
\$250.00	15 th through 30 th day
\$500.00	31 st day and beyond

52. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

53. Respondent must pay any stipulated penalties within 15 days of receiving EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraphs 33 and 35 above, and will pay interest, handling charges and penalties on overdue amounts as specified in paragraph 38, above.

54. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEPs.

55. Any public statement that Respondent makes referring to the SEPs must include the

following language, “Cindy Draher undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Cindy Draher, for alleged violations of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Force Majeure

56. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent’s past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

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

58. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. 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.

60. Respondent certifies that she is complying with the Lead Act and the Disclosure Rule.

61. The terms of this CAFO bind Respondent, and her successors and assigns.

62. 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 term.

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

64. This CAFO constitutes the entire agreement between the parties

**In the Matter of: Cindy Draher, Akron, Ohio.
Docket No. TSCA-05-2012-0001**

Cindy Draher, Respondent

9/7/12
Date

Cindy Draher
Cindy Draher

United States Environmental Protection Agency, Complainant

September 24, 2012
Date


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

In the Matter of: Cindy Draher, Akron, Ohio.
Docket No. TSCA-05-2012-0001

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.

9-24-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY


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 Cindy Draher was filed on September 26, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7668 0691 to:

Mr. Archie W. Skidmore
Skidmore & Associates
PNC Center
One Cascade Plaza, 12th Floor
Akron, Ohio 44308

and forwarded intra-Agency copies to:

Ann Coyle, 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-05-2012-0001

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