

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

2013 FEB 28 AM 9:48

**11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of

Tristan Bonn
3329 Hickory Street
Omaha, Nebraska 68105

Respondent

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Docket No. TSCA-07-2013-0004

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Tristan Bonn (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 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*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. § 4852d.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Tristan Bonn (Bonn).

Section III

Statutory and Regulatory Background

5. Congress passed the Act, 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: (a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; (b) provide purchasers and

lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; (c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; (d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and (e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Section IV

General Factual Allegations

6. Respondent is, and at all times referred to herein was a “person” within the meaning of TSCA.
7. Respondent is the lessor as defined by 40 C.F.R. § 745.103, for the properties located at 336 North 35th Street in Omaha, Nebraska;(the Property).
8. The Properties were constructed before 1978.
9. The Properties are “target housing” as defined by 40 C.F.R. § 745.103.

Violations

10. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.
12. Respondent entered into contracts to lease the following target housing units: unit 336 North 35th Street in Omaha, Nebraska, on or about November 1, 2011.

13. Respondent failed to conduct disclosure activities at 336 North 35th Street in Omaha, Nebraska before lessees were obligated under contract to lease the target housing unit as required by 40 C.F.R. § 745.107(a)(1).

Section V

Consent Agreement

14. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

15. Respondent neither admits nor denies the factual allegations set forth above.

16. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

17. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

18. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

19. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty based on the Ability to Pay (ATP) determination. The ATP determination was based on the Respondent's Ability to Pay claim and financial information submitted to EPA. This financial information was reviewed, and it was determined that Respondent cannot pay any portion of the proposed penalty at this time.

Section VI

Final Order

Pursuant to the provisions of TSCA, 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent, in settlement of the allegations set forth in the Complaint, shall not be assessed a civil penalty.
2. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:

TRISTAN BONN

Date: 1/7/13

By: Tristan Bonn

TRISTAN BONN
Print Name

OWNER
Title

**COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 1/18/12

By: Jamie Green
Jamie Green
Chief
Toxics and Pesticides Branch
Water, Wetlands and Pesticides Division

Date: 1/17/12

By: Jennifer Trotter
Jennifer Trotter
Attorney
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Feb. 21, 2013 Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer

IN THE MATTER OF Tristan Bonn, Respondent
Docket No. TSCA-07-2013-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

Tristan Bonn
3329 Hickory Street
Omaha, Nebraska 68105

Dated: 2/28/13


Kathy Robinson
Hearing Clerk, Region 7