

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 7
2016 JUN 20 PM 2:57

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Ella Real Property Holdings, LLC) **Docket No. TSCA-07-2016-0028**
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and Ella Real Property Holdings, LLC (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 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 serves as notice that the EPA has reason to believe that Respondent has violated Section 409 of the 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, 42 U.S.C. § 4852d.

Section II

Parties

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

4. The Respondent is Ella Real Property Holdings, LLC, a lessor of real property located in O'Fallon, Missouri.

Section III

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended the TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the 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 phase-out 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 the TSCA.

Section IV

General Factual Allegations

6. Respondent is, and at all times referred to herein was, a “person” within the meaning of the TSCA.

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of 428 North Main Street, O’Fallon, Missouri (the Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

Violation

10. The Complainant hereby states and alleges that Respondent has violated TSCA and the 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 a contract to lease the Property on or about February 27, 2014.

13. Respondent failed to provide the lessee of the Property with an EPA-approved lead hazard information pamphlet before lessee was obligated under contract to lease the target housing unit.

14. Respondent's failure to perform the act indicated in Paragraph 13 above is a violation of 40 C.F.R. §§ 745.107 and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of the TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of the TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

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

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

17. 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.

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

19. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

20. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

21. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a mitigated penalty of Eleven Thousand Two Hundred Dollars (\$11,200) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of the TSCA

alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of the TSCA or any other applicable law and/or regulation administered by the EPA.

22. The effect of settlement described in Paragraph 21 above is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 20 of this Consent Agreement and Final Order.

23. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

24. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (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 shall pay a civil penalty of Eleven Thousand Two Hundred (\$11,200) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

4. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
ELLA REAL PROPERTY HOLDINGS, LLC


Date: 6/14/16

By: Michael V. Schneider

Michael V. Schneider
Print Name Title


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/20/16



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

Date: 6/20/14



Kelley Catlin
Office of Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective upon filing.

Date: June 20, 2016

Karina Borromeo

Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER Of Ella Real Property Holdings, LLC, Respondent
Docket No. TSCA-07-2016-0028

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:

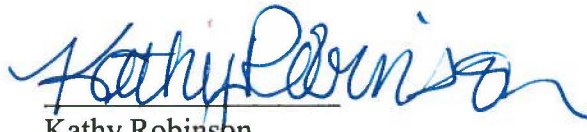
Copy emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

Robert Wohler, Esq.
225 S Main Street, #100
O'Fallon, Missouri 63366

Dated: 6/20/16


Kathy Robinson
Hearing Clerk, Region 7