

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.

Parties

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

4. The Respondent is Somerset Management Company, L.L.C., a corporation incorporated under the laws of Kansas and authorized to conduct business in the State of Kansas

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 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.

Factual Background

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

7. Respondent is the lessor, as that term is defined by 40 C.F.R. § 745.103, of Cherrywood Apartments, located at 1125 SW Polk, Topeka, Kansas 66112.

8. The property referenced above was constructed before 1978; therefore, it is “target housing” as that term is defined by 40 C.F.R. § 745.103.

Alleged Violations

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

Count 1

9. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

10. Information collected shows that Respondent entered into a contract to “lease” Unit 9 of Cherrywood Apartments on or about August 29, 2005.

11. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under a contract to lease target housing.

12. Respondent’s failure to provide an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities constitutes violations of 40 C.F.R. §§ 745.107, 745.113 and 745.115, 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 TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

13. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

14. Information collected shows that Respondent entered into a contract to “lease” Unit 27 of Cherrywood Apartments on or about October 28, 2005.

15. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under a contract to lease target housing.

16. Respondent’s failure to provide an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities is a violation of 40 C.F.R. §§ 745.107, 745.113 and 745.115, 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 TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

17. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

18. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

19. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

20. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.

21. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

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

23. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$3,080 to be paid within thirty (30) days of the effective date of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Part 745, Subpart F, alleged in this Consent Agreement and Final Order.

24. The effect of settlement described in Paragraph 23 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 22 of this Consent Agreement and Final Order.

25. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 23 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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 charged 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.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and according to the terms of this Consent Agreement and Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$3,080 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the 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
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Jonathan Meyer, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and to seek penalties against Respondent or to seek any other remedy allowed by law.

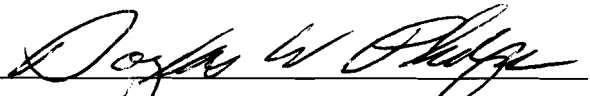
6. Complainant reserves the right to take enforcement action against Respondent for any future violations of TSCA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.


RESPONDENT
SOMERSET MANAGEMENT COMPANY, L.L.C.

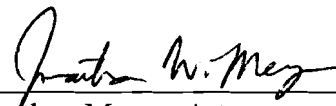
Date: 3-08-07

By:

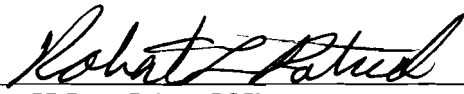

Douglas W. Phelps Owner
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/28/07 By: 
Jamie Green, Branch Chief
Toxics and Pesticides Branch

Date: 3-27-07 By: 
Jonathan Meyer, Attorney
Office of Regional Counsel

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

Date: March 29, 2007 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Somerset Management Company, L.L.C. , Respondent
Docket No. TSCA-07-2007-0020

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William J. Bahr
Arthur-Green LLP
801 Poyntz Avenue
Manhattan, Kansas 66502

Dated: 3/29/07



Kathy Robinson

Kathy Robinson
Hearing Clerk, Region 7