



*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 EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondents are Brandon and Rebecca McGinnis of La Cygne, Kansas. Respondents are lessors of residential housing located in Pleasanton, Kansas.

## **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 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. Respondents are, and at all times referred to herein were, “persons” within the meaning of TSCA.

7. Respondents are the “lessors” as defined by 40 C.F.R. § 745.103, for the lease of 202 East 8<sup>th</sup> Street, Pleasanton, Kansas (the Property).

8. The Property was constructed before 1978.

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

10. On or about June 14, 2011, Respondents received a certified letter from the Kansas Department of Health and Environment (KDHE) with a copy of a risk assessment conducted at the Property. The risk assessment provided an outline of the lead-based paint hazards that exist at the Property.

##### **Violations**

11. The Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

##### **Count 1**

12. The facts stated in Paragraphs 6 through 10 above are herein incorporated.

13. Respondents entered into a contract to lease the target housing unit located at 202 East 8<sup>th</sup> Street, Pleasanton, Kansas, on or about May 6, 2011.

14. Respondents failed to provide the lessee of 202 East 8<sup>th</sup> Street with an EPA-approved lead hazard information pamphlet before lessee was obligated under contract to lease the target housing unit.

15. Respondents' failure to perform the acts indicated in Paragraph 14 above is a violation of 40 C.F.R. §§ 745.107 and 745.113, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**Count 2**

16. The facts stated in Paragraphs 6 through 10 above are herein incorporated.

17. Respondents entered into a contract to lease the target housing unit located at 202 East 8<sup>th</sup> Street, Pleasanton, Kansas, on or about August 29, 2011.

18. Respondents failed to provide the lessee of 202 East 8<sup>th</sup> Street with a copy of the KDHE letter and risk assessment documenting the lead-based paint hazards existing at the Property.

19. Respondents' failure to perform the act indicated in Paragraph 18 above is a violation of 40 C.F.R. § 745.107, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**Section V**

**Consent Agreement**

20. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

21. Respondents neither admit nor deny the factual allegations set forth above.

22. Respondents waive their right to contest any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

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

24. Respondents certify by the signing of this Consent Agreement and Final Order that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

25. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty as specified in the Final Order.

26. The effect of settlement described in Paragraph 27 below is conditioned upon the accuracy of Respondents' representations to EPA, as memorialized in Paragraph 24 above of this Consent Agreement and Final Order.

27. Payment of this civil penalty in full 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. Subpart F alleged in this document.

28. In settlement of this matter, Respondents agree to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: Respondents will perform a window replacement SEP, per EPA's Renovation, Repair, and Painting (RRP) Rule, by and through a

through a certified RRP contractor at a cost of not less than Thirteen Thousand Four Hundred Eighty-Three Dollars (\$13,483) to address potential lead-based paint hazards at a target housing unit owned by Respondents. The window and door replacement SEP will reduce potential lead-based paint hazards in said property by replacing the property's original windows. The window and door replacement work will be performed at 108 West 10<sup>th</sup> Street, Pleasanton, Kansas, to include removal and replacement of 32 lead-based painted windows with lead free windows and two lead-based paint patio doors. The SEP will be performed in accordance with the bid attached to this document and incorporated by reference. The SEP shall be performed in accordance with all federal, state and local laws.

29. Within thirty (30) days of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Kansas Department of Health and Environment informing the state of Kansas of Respondents' intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

30. The total expenditure for the SEP shall be not less than Thirteen Thousand Four Hundred Eighty Three Dollars (\$13,483) and the SEP shall be completed no later than One Hundred Eighty (180) days from the effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

31. Respondents agree that the window replacement work on the SEP project will be performed by entities licensed and/or certified by the state of Kansas to perform window replacement activities under the RRP Rule. Respondents are responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 28 above receive a copy of this CAFO and all attachments pertaining to the SEP project. Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

32. Within thirty (30) days of completion of the SEP, Respondents shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) The total amount Respondents spent on the window replacement SEP, including itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The lead safe work practices worksheet/record keeping checklist and/or any lead-based paint testing documentation, as required by the RRP rule; and
- (iv) The following certification signed by Respondents or, if Respondents are a corporation, an officer of the corporation:

**I certify under penalty of law** that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

As to EPA:

Cassandra Mance  
WWPD/TOPE  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

As to the State:

Thomas Langer  
Kansas Department of Health and Environment  
1000 SW Jackson Suite 330  
Topeka, Kansas 66612-1274.

33. Respondents agree to the payment of stipulated penalties as follows:

- a. In the event Respondents fail to comply with any of the terms or

provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondents shall be liable for and shall pay a stipulated penalty to the United States in the amount of Twelve Thousand Eight Hundred Sixty-Two Dollars (\$12,862).

(ii) If the SEP is satisfactorily completed, but the Respondents spend less than Thirteen Thousand Four Hundred Eighty Three Dollars (\$13,483) on the SEP, Respondents shall pay as a stipulated penalty to the United States the amount of Thirteen Thousand Four Hundred Eighty Three Dollars (\$13,483) minus the amount that Respondents can demonstrate it spent upon the satisfactorily completed SEP.

b. If Respondents fail to timely and completely submit the SEP Completion Report required by this CAFO, Respondents shall be liable for and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100.00) for each day after the due date until a complete report is submitted.

c. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP.

d. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other resolution under this CAFO.

e. Respondents shall pay stipulated penalties not more than fifteen (15)



days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 1 the Final Order portion of this CAFO.

34. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are Respondents required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondents certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

35. Respondents further certify that, to the best of their 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 of this settlement (unless the project was barred from funding as statutorily ineligible). For the 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 yet expired.

36. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

37. Any public statement, oral or written, in print, film or other media, made by Respondents making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

38. Respondents understand that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 33 above 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. Respondents shall pay a mitigated civil penalty of Four Thousand Two Hundred Eighty-Eight (\$4,288), plus interest of Twenty Dollars and Eight Cents over a period of one year for a total payment of Four Thousand Three Hundred Eight Dollars and Eight Cents (\$4,308.08). The total payment shall be paid in quarterly payments of One Thousand Seventy-Seven Dollars and Two Cents (\$1,077.02). The first payment must be received at the address below within thirty (30) days of the effective date of this Final Order. Each subsequent payment shall be paid ninety (90) days after the previous payment. Each penalty payment shall identify Respondents by name and docket number (TSCA-07-2013-0002) 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  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

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. Respondents shall complete the SEP in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty(ies) for failure to complete such project as specified in the Consent Agreement.

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

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

**RESPONDENT**

Brandon and Rebecca McGinnis

Date: 11-1-12

By: 

Brandon McGinnis  
Print Name


Date: 11/1/12

By: 


Rebecca L. McGinnis  
Print Name

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

Date: 11/6/12

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

Date: 11/6/12

  
\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

**IT IS SO ORDERED.**

Date: 11/15/12

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency

IN THE MATTER OF Brandon and Rebecca McGinnis, Respondents  
Docket No. TSCA-07-2013-0002

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:

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

Copy by First Class Certified Mail to:

Brandon and Rebecca McGinnis  
17718 East 1700 Road  
La Cygne, Kansas 66040

Dated: 11/19/12

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7