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U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

In the Matter of)
) Docket No. TSCA-07-2012-0006
)
Flora G. and John D. DeBacker Trust)
Topeka, Kansas)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Flora G. and John D. DeBacker Trust (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, 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 Flora G. and John D. DeBacker Trust (DeBacker).

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. 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 property located at 1005 SE Lafayette Street in Topeka, 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.

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 a contract to lease the target housing unit located at 1005 SE Lafayette Street on or about September 16, 2009.

13. Respondent failed to conduct lead based paint disclosure activities with the lessees of 1005 SE Lafayette Street before lessees were 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), violations 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.

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

19. 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.

20. 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.

21. 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.

22. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: Respondent will perform a window

replacement abatement SEP, per HUD guidelines, to address potential lead based paint hazards at Respondent's properties located in Topeka, Kansas at 726 SE Locust Street, 735 SE Lafayette Street, and 1005 SE Lafayette Street. The window replacement SEP will reduce potential lead based paint hazards in said properties by replacing the properties' original windows.

23. The total expenditure for the SEP shall not be less than \$4900 and the SEP shall be completed no later than one year 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.

24. Respondent agrees that the window replacement work on the SEP project referenced in Paragraph 22 above will be performed by certified abatement contractor in the State of Kansas. Respondent is responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 22 above receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project including the EPA approved SEP Work Plan, if applicable. Respondent is responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

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

26. Within sixty (60) days of the effective date of this Final Order, Respondent shall submit an Interim SEP Report to EPA. The Interim SEP Report shall contain the following:

- (i) The total number of windows that will be replaced during the window replacement SEP; and

- (ii) The addresses for the units/properties where the windows will be replaced.

The report shall be directed to the following:

As to EPA:

Cassandra Mance
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

27. Within thirty (30) days of completion of the abatement SEP described in Paragraph 22 above, Respondent will have a certified inspector, other than the certified abatement contractor performing the abatement SEP, conduct clearance sampling on the abatement work described in Paragraph 22 above. The Respondent agrees to correct any lead based paint hazards indicated by the clearance sampling results. The clearance sampling and any necessary correction shall be performed in accordance with HUD guidelines.

28. Upon receipt of the clearance sampling results, Respondent shall submit the clearance sampling results to:

As to EPA:

Cassandra Mance
WWPD/TOPE
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

As to the State:

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

29. Within thirty (30) days of the receipt of the clearance sampling results, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) The total amount Respondent spent on the window replacement SEP, including itemized costs, documented by copies of purchase orders, or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent:

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
901 North 5th Street
Kansas City, Kansas 66101

As to the state:

Shannon Steinbauer
Kansas Department of Health and Environment

1000 SW Jackson, Suite 330
Topeka, Kansas 66612-1274.

30. If the SEP referenced in Paragraph 22 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of 100 percent of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

- (i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.
- (ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within one year of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 25 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.
- (iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

31. Respondent certifies that it is not required to perform or develop the SEP by any

federal, state or local law or regulation; nor is Respondent 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. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

32. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

33. Any public statement, oral or written, in print, film or other media, made by Respondent 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."

34. Respondent understands that its 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 30 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. Respondent shall pay a civil penalty of \$1,050.00 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
PO Box 979077
St. Louis, Missouri 63197-9000

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
901 North 5th Street
Kansas City, Kansas 66101; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the SEP in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty 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.

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RESPONDENT:

FLORA G. and JOHN D. DEBACKER TRUST

Date: 12/5/11

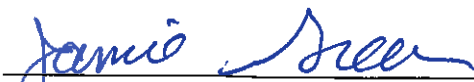
By: J. D. DeBacker

JOHN D. DEBACKER
Print Name

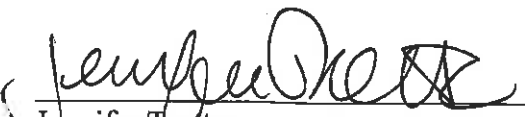
OWNER-TRUSTEE
Title

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

Date: 1/12/2012

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

Date: 1/11/12

By: 
Jennifer Trotter
Attorney
Office of Regional Counsel

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

Date:

Jan. 23, 2012



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Flora G. And John D. DeBacker Trust, Respondent
Docket No. TSCA-07-2012-0006

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
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John D. and Flora G. DeBacker
3221 NW Topeka Blvd.
Topeka, Kansas 66617

Dated: 1/25/12


Kathy Robinson
Hearing Clerk, Region 7