



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 04 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7673 4554

Ms. Jennifer A.B. Kreil
Meissner, Tierney, Fisher & Nichols
The Milwaukee Center, 19th FL.
111 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

Consent Agreement and Final Order in the Matter of : Mae Brooks
Docket No. TSCA-05-2012-0014


Dear Ms. Kreil:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on May 4, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the number **BD# 2751247X015** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 3, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Estralla Calvo
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Mae Brooks)
Milwaukee, Wisconsin)

Respondent.)
_____)

Docket No. TSCA-05-2012-0014

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

RECEIVED

MAY 04 2012

Consent Agreement and Final Order

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Mae Brooks, widow of Hoskin Brooks, a sole proprietor doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

11. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a Lead Warning Statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor, agent, and lessee certifying the accuracy of their statements.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

17. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Between at least January 1, 2004 and October 1, 2008, Respondent and Hoskin Brooks, deceased, owned residential rental property in Milwaukee, Wisconsin at 3249 North 10th

Street, 3252 North 10th Street, 3253 North 10th Street, 2510-2512 North 12th Street, 3359B North 12th Street, 3040-3040A North 27th Street, 3115 North 15th Street, and 1423 West Columbia (Respondent's Properties).

19. Respondent's Properties and each unit within Respondent's Properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On or about the following dates, Respondent, either directly or through her authorized agent, entered into the following 12 oral lease agreements and 1 written lease agreement (contracts) with individuals for the lease of units in Respondent's Properties:

Address	Lease Transaction Date
3249 North 10th Street	10/01/2006
3252 North 10th Street	10/01/2008
3252 North 10th Street	11/01/2006
3253 North 10th Street	06/01/2007
2510 North 12th Street	05/01/2007
2510 North 12th Street	04/01/2008
2512 North 12th Street	12/01/2007
3359B North 12th Street	01/01/2004
3040 North 27th Street	01/01/2005
3040A North 27th Street	01/01/2005
3115 North 15th Street	03/01/2006
1423 West Columbia	08/09/2006
1423 West Columbia	11/04/1007

21. Each of the 13 contracts referenced in paragraph 20, above, covered a term of occupancy greater than 100-days.

22. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because she has offered the target housing referenced in paragraph 20, above, for lease.

23. Each individual who signed a lease or entered into an oral contract to pay rent in exchange for occupancy of a unit, referenced in paragraph 20, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

24. Respondent failed to include a lead warning statement, either within the contracts or as an attachment to the contracts for the lease of Respondent's Properties referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C § 2689, and 42 U.S.C. § 4825d(b)(5).

25. Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contracts or as an attachment to the contracts referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C § 2689, and 42 U.S.C. § 4825d(b)(5).

26. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that had been provided to the lessee or a statement that no such records were available, either within the contracts or as an attachment to the contracts referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C § 2689, and 42 U.S.C. § 4825d(b)(5).

27. Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contracts or as an attachment to the contracts referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C § 2689, and 42 U.S.C. § 4825d(b)(5).

28. Respondent failed to include the signatures of the lessor, agent, and the lessee certifying to the accuracy of their statements and the dates of such signatures, either within the contracts or as an attachment to the contracts referenced in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C § 2689, and 42 U.S.C. § 4825d(b)(5).

29. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$1,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the alleged violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state [In the Matter of Mae Brooks], the docket number of this CAFO, and the billing document number.

31. A transmittal letter stating Respondent's name, the case title [In the Matter of Mae Brooks], Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 35, below, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

35. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

36. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

38. Respondent certifies that she is complying with the Lead Act and the Disclosure Rule.

39. The terms of this CAFO bind Respondent, and her successors and assigns.

40. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

41. Each party agrees to bear its own costs and attorney's fees in this action.

42. This CAFO constitutes the entire agreement between the parties.

Mae Brooks, Respondent

4-6-2012
Date

Mae W. Brooks
Mae Brooks

United States Environmental Protection Agency, Complainant

4/26/12
Date


Margaret Guerriero
Margaret Guerriero
Director
Land and Chemicals Division

In the Matter of:
Mae Brooks
Docket No. TSCA-05-2012-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-2-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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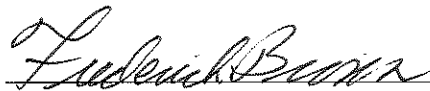
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Mae Brooks was filed on May 4, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipts No:7009 1680 0000 7673 4554, to:

Ms. Jennifer A.B. Kreil
Meissner, Tierney, Fisher & Nichols
The Milwaukee Center, 19th FL.
111 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Tamara Carnovsky, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0014

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