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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

**1201 Elm Street, Suite 500
Dallas, Texas 75270**

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

McClure Family Legacy Trust,

Respondent.

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Docket No. TSCA-06-2023-6156

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and McClure Family Legacy Trust (“Respondent”) have agreed to a settlement of this action before the 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, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated 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 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.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is McClure Family Legacy Trust, a person conducting business in the state of Texas.

Statutory and Regulatory Background

5. TSCA was amended with the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, with the addition of Title IV – Lead Exposure Reduction, Section 401 to 412 of TSCA, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the EPA and the Department of Housing and Urban Development to jointly issue regulation requiring the disclosure of known lead-based paint and/or lead-based paint hazards by people selling or leasing housing constructed prior to 1978.

6. 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.

7. The requirements set forth in the regulations at 40 C.F.R. Part 745, Subpart F, apply to all sales or leases of target housing, unless otherwise excluded as set forth in 40 C.F.R. § 745.101.

8. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. §§ 745.107 (disclosure requirements), 745.110 (evaluation), 745.113 (certification and acknowledgement), or 745.115 (agent responsibilities), is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart F.

9. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes a civil penalty of not more than \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limits penalties for violations of 42 U.S.C. § 4852d(b)(5), assessed under Section 16 of TSCA, 15 U.S.C. § 2615, to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$46,989 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

Definitions

10. The regulation at 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.

11. The regulation at 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.

EPA Findings of Fact and Conclusions of Law

12. Pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, the EPA conducted an inspection on June 27, 2022, to evaluate Respondent’s compliance with TSCA.

13. At the time of the EPA inspection, and at all times referred to herein, Respondent was engaged in the lease of target-housing, as defined by 40 C.F.R. § 745.103.

14. Respondent is, and at all times referred to herein was, a “lessor”, as defined by 40 C.F.R. § 745.103.

15. From on or about November 1999, Respondent entered into contracts to lease three (3) target housing units located in Texas (1609 Glouchester Dr., Garland, Texas 75044; 1230 Rutherford Dr., Mesquite, TX 75149; and 11344 McCree Rd., Dallas, TX 75238) (the Properties).

16. The Properties were constructed before 1978.

17. The Properties are “target housing” as defined by 40 C.F.R. § 745.103.

18. On April 19, 2023, the EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer letter. The EPA responded to the documentation and information received from Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning Respondent’s compliance with TSCA.

19. As a result of the EPA inspection and additional information obtained by the EPA, Complainant has determined that violations of the 40 C.F.R. § 745, Subpart F and Section 409 of TSCA, 15 U.S.C. § 2689, have occurred.

EPA Findings of Violation

20. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

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

Count 1 - 3

22. Pursuant to 40 C.F.R. § 745.107(a)(1), the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not an otherwise exempt transaction.

23. Respondent failed to provide the lessees of each of the three (3) Properties with the EPA-approved lead hazard information pamphlet before the lessees were obligated under the contract to lease each of the Properties.

24. Respondent's failure to provide the EPA-approved lead hazard information pamphlet to each of the three (3) lessees of the Properties is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4 - 6

25. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard pamphlet

required under 15 U.S.C. § 2686.

26. Respondent failed to include in each of the three (3) contracts to lease the Properties, as an attachment or within the contract, a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2686.

27. Respondent's failure to include a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2686 in each of the three (3) contracts for the lease of the Properties is a violation of 40 C.F.R. § 745.113(b) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

28. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

29. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

Penalty Payment

31. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Six Hundred Eighty-Three Dollars Thirty-Three Cents (\$683.33), as set forth below.

32. Respondent shall pay the penalty within thirty (30) days of receiving notice of the effective date of the 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

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

33. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Angela Hays
Enforcement and Compliance Assurance Division
Toxics Enforcement Section

U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDST)
Dallas, Texas 75270-2101
hays.angela@epa.gov

34. Respondent understands that its failure to timely pay any portion of the civil penalty 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

35. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

36. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

37. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

38. Full payment of the penalty proposed in this Consent Agreement shall not in any

case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

39. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

40. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

41. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

42. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

43. 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.

44. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *george.elizabeth.a@epa.gov*

To Respondent: *amcchureatty@sbcglobal.net*

RESPONDENT
MCCLURE FAMILY LEGACY TRUST

Date: 5-14-23

By: McClure Family Legacy Trust
Signature

McClure Family Legacy TRUST
Print Name

Kay McClure, Trustee
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 16, 2023

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2023.05.16 11:19:51
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Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 16(a) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1-68001003655804
Date: 2023.05.23 10:32:09 -0400

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

amclureatty@sbcglobal.net

Signed
Office of Regional Counsel
U.S. EPA, Region 6