



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

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 5443

Ms. Bonita L. Sisto
6128 Ogden Avenue
Superior, Wisconsin 54880

Bonita L. Sisto, Superior, Wisconsin TSCA-05-2009-0001

Dear Ms. Sisto:

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 October 6, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,700.00 is to be paid in 18 monthly payments described in paragraphs 47 through 49. Please be certain that the number BD2750967X001 and the docket number are written on both the transmittal letter and on the checks. First payment is due by November 5, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Estrella Calvo
Pesticides and Toxic Compliance Section

Enclosures

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

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or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b), provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

Statutory and Regulatory Requirements

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

6. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. EPA promulgated regulations at 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 (Disclosure Rule).

7. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

8. 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.

9. 40 C.F.R. § 745.103 defines "seller" as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C.F.R. § 745.103 defines "purchaser" as any entity that enters into an agreement to purchase an interest in target housing, including, but not limited to individuals, partnerships,

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

11. 40 C.F.R. § 745.100 requires, among other things, that the seller complete the specified disclosure activities before the purchaser is obligated under a contract to purchase target housing.

12. 40 C.F.R. § 745.107(a)(1) requires the seller to provide the purchaser with an EPA-approved lead hazard information pamphlet.

13. 40 C.F.R. § 745.110(a) requires the seller to permit the purchaser a ten-day period to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

14. 40 C.F.R. § 745.113(a)(1) of the Disclosure Rule requires the seller to include as an attachment to each contract to sell target housing, a lead warning statement before a purchaser is obligated under the contract to purchase target housing.

15. 40 C.F.R. § 745.113(a)(2) requires the seller to include as an attachment to each contract to sell target housing, a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

16. 40 C.F.R. § 745.113(a)(3) requires the seller to include as an attachment to each contract to sell target housing, a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the purchaser. If no such records or reports are available, the seller must so indicate.

17. 40 C.F.R. § 745.113(a)(4) requires the seller to include as an attachment to each contract to sell target housing, a statement by the purchaser affirming receipt of the information

set out in 40 C.F.R. § 745.113(a)(2) and (a)(3) and the Lead Hazard Information Pamphlet before a purchaser is obligated under the contract to purchase target housing.

18. 40 C.F.R. § 745.113(a)(5) requires the seller to include as an attachment to each contract to sell housing, a statement that the purchaser has either received the opportunity to conduct the risk assessment or inspection required by § 745.110(a) or waived the opportunity.

19. 40 C.F.R. § 745.113(a)(7) requires the seller to include as an attachment to each contract to sell target housing, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a purchaser is obligated under the contract to purchase target housing.

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

Stipulated Facts

21. Between July 31, 1998 and March 28, 2006, Respondent owned residential rental property at 6120 Ogden Avenue, Superior, Wisconsin.

22. The residential rental property is “target housing” as defined in 40 C.F.R. § 745.103.

23. On March 28, 2006, Respondent entered into a written agreement titled *Land Contract* to sell the residential rental property referenced in paragraph 21, above.

24. Respondent is a “seller,” as defined by 40 C.F.R. § 745.103, since she has transferred legal title to target housing in whole or in part, in return for consideration.

25. The individuals who entered into an agreement to purchase the target housing are “purchasers,” as defined in 40 C.F.R. § 745.103.

26. On October 10, 2006, certified lead risk assessors from the Douglas County Health Department conducted a lead risk assessment at the property identified in paragraph 21, above, due to the presence of a child with an elevated blood lead level living in the home.

27. 40 C.F.R. § 745.223 defines “elevated blood lead level” (EBL) as an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 $\mu\text{g}/\text{dl}$ (micrograms of lead per deciliter of whole blood) for a single venous test.

28. On October 23, 2006, the Respondent received an “Order to Correct Condition of Premises” for the property identified in paragraph 21, above.

29. On February 22, 2007, U.S. EPA advised Respondent by letter that U.S. EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, the U.S. EPA asked Respondent to submit specific financial documents.

30. On March 6, 2007, Respondent received the pre-filing letter referenced in paragraph 29, above. Respondent claimed an inability to pay a penalty and did provide facts and other information concerning an ability to pay a penalty.

31. The Director of the Land and Chemicals Division, U.S. EPA, Region 5, has determined that the Respondent has violated federal regulations regarding the disclosure of lead-based paint and/or lead-based paint hazards, 40 C.F.R. Part 745, as described below, and therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

Alleged Violations

32. The U.S. EPA alleges that Respondent failed to provide the purchasers with an EPA-approved lead hazard information pamphlet before the purchasers were obligated under any contract to sell target housing as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.107(a)(1).

33. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, a Lead Warning Statement, before the purchasers were obligated under the contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(1).

34. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the purchasers were obligated under the contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(2).

35. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, a list of any records or reports available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the purchasers were obligated under the contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(3).

36. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696 before the purchasers were obligated under the

contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(4).

37. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before the purchasers were obligated under the contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(5).

38. The U.S. EPA alleges that Respondent failed to provide the purchasers as an attachment to the contract to sell target housing, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before the purchasers were obligated under the contract to purchase target housing, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. 745.113(a)(7).

Penalty Calculation

39. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C.F.R. § 19.2 (61 Fed. Reg. 69361 [1996]).

40. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator,

ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability and such other factors as justice may require.

41. In consideration of the cooperation displayed by the Respondent, the immediate efforts to comply with the Disclosure Rule, the Respondents ability to pay the proposed penalty and the manner in which the Parties reached settlement in this matter, U.S. EPA agrees to mitigate the penalty from \$43,238 to \$2,700.

Opportunity to Request a Hearing

42. Upon affixing her signature to this agreement, Respondent waives all rights to request a judicial or administrative hearing under the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules on any issue of law or fact set forth in this CAFO, including, but not limited to, her right to request a hearing, and her right to appellate review of the Final Oder. This waiver includes any right to contest the appropriateness of the amount of the proposed and final penalty.

Terms of Settlement

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

44. Respondent waives her right to a hearing on the allegations in this CAFO, and her right to appeal. 40 C.F.R. § 22.18.

45. Respondent certifies that upon the effective date of this CAFO, she is complying fully with 40 C.F.R. Part 745, Subpart F, and intends to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

46. The parties consent to the terms of this CAFO.

47. Respondent shall pay the \$2,700 civil penalty in 18 monthly payments of \$150.00 by cashiers or certified check payable to the "*Treasurer, United States of America,*" beginning within 30 days after the effective date of this CAFO.

48. Respondent shall send check to:

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

49. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo, PTCS (LC-8J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Jose C. de Leon
Associate Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

50. This civil penalty is not deductible for tax purposes.

51. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and

appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

52. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

53. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged.

54. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

55. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

56. The terms of the CAFO bind the Respondent and her assigns, and in the event of any conveyance of the subject property, the successors and assigns of said conveyance.

57. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the Party for whom he or she represents and to bind that Party to its terms.

58. Each Party agrees to bear its own costs and fees in this action.

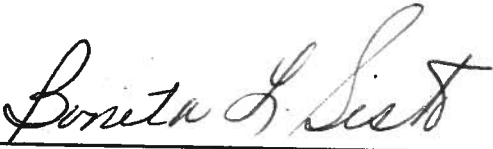
59. This CAFO constitutes the entire agreement between the Parties.

**Consent Agreement and Final Order
In the Matter of: Bonita L. Sisto**

Docket No. TSCA-05-2009-0001


Bonita L. Sisto, Respondent

Date: 9-3-2008

By: 
Bonita L. Sisto, Respondent

United States Environmental Protection Agency, Complainant

Date: 9/17/08

By: 
Margaret M. Guerriero,
Director
Land and Chemicals Division

**Consent Agreement and Final Order
In the Matter of: Bonita L. Sisto**


Docket No. TSCA-05-2009-0001

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 9-30-08

By: 
Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5

OFFICE OF REGIONAL
COUNSEL
SEP 29 2008
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

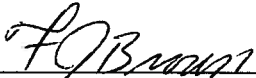
This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Bonita L. Sisto, was filed on October 6, 2008, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail to:

Ms. Bonita L. Sisto
6128 Ogden Avenue
Superior, Wisconsin 54880
Receipt No.7001 0320 0005 8921 5443

Mr. Craig S. Hunter, Attorney
Northland Law
11 East Superior Street Suite 328
Duluth, Minnesota 55802
Receipt No. 7001 0320 0005 8921 5092

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jose C. de Leon, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. TSCA-05-2009-0001

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