

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of
ELMER BUTTS
Respondent

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Docket No. TSCA-07-2008-0047

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Elmer Butts (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).

FACTUAL ALLEGATIONS

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 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.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Elmer Butts, 37515 East Cline Road, Lone Jack, Missouri 64070.

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.

Factual Background

6. Respondent is, and at all times referred to herein was, a “person” within the meaning of TSCA.

7. Respondent is the “lessor” or “agent” as that term is defined by 40 C.F.R. § 745.103, of single family dwelling units located at the following addresses (“the Properties”):

- a. 29509 AA Hwy, Blue Springs, Missouri
- b. 2635 Lawn Avenue, Kansas City, Missouri
- c. 2613 Kensington Avenue, Kansas City, Missouri
- d. 2910 NW 5th Street, Blue Springs, Missouri
- e. 3606 Lexington, Kansas City, Missouri
- f. 333 Bellefontaine Avenue, Kansas City, Missouri
- g. 1733 South Northern Boulevard, Independence, Missouri
- h. 4707 East 24th Street, Kansas City, Missouri

8. The Properties were constructed before 1978, and are “target housing” as that term is defined by 40 C.F.R. § 745.103.

Alleged Violations

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

Count 1

10. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

11. Information collected during an EPA inspection of Respondent’s records on or about May 15, 2008, shows that Respondent entered into multiple contracts to sell and/or lease target housing units.

12. Information collected shows that, for all leases for target housing units at the

Properties, Respondent failed to provide the lessees of the Properties owned and/or managed by Respondent with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were obligated under contract to lease the target housing units owned and/or managed by Respondent.

13. Respondent's failure to perform the acts indicated in Paragraph 12 above are violations of 40 C.F.R. §§ 745.107, 745.113, and 745.115, and in accordance with 40 C.F.R. § 45.118(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.

CONSENT AGREEMENT

14. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Consent Agreement and Final Order.

15. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

16. Respondent neither admits nor denies the factual allegations set forth above.

17. Respondent waives its right to a judicial or administrative hearing on 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 attorneys' 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 mitigated civil penalty in the amount of Seven Thousand Seven Hundred and Seventy Dollars (\$7,770.00), plus interest of Six Hundred Twenty-three Dollars and Ninety-two Cents (\$623.92), for a total payment of Eight Thousand Three Hundred Twenty-three Dollars and Ninety-two Cents (\$8,323.92). This penalty shall be paid in thirty-six (36) payments of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) each. An initial payment of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) shall be paid on or before thirty (30) days of the effective date of this Final Order. Each succeeding payment of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) shall be due thirty (30) days after the previous payment. Payment of this civil penalty 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.

21. The effect of settlement described in Paragraph 20 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 19 of this Consent Agreement and Final Order.

22. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 20 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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 charged 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.

23. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

24. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

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 Seven Thousand Seven Hundred Seventy Dollars (\$7,770.00) plus interest of Six Hundred Twenty-three Dollars and Ninety-two Cents (\$623.92), for a total payment of Eight Thousand Three Hundred Twenty-three Dollars and Ninety-two Cents (\$8,323.92). This penalty shall be paid in thirty-six (36) payments of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) each. An initial payment of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) shall be paid on or before thirty (30) days of the effective date of this Final Order. Each succeeding payment of Two Hundred Thirty-one Dollars and Twenty-two Cents (\$231.22) shall be due thirty (30) days after the previous

payment. Such payment shall identify the 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:

EPA-Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Barbara L. Peterson, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. The effective date of this Consent Agreement and Final Order shall be the date on which it is filed with the Regional Hearing Clerk.

IN THE MATTER OF Elmer Butts
Docket No. TSCA-07-2008-0047

**RESPONDENT
ELMER BUTTS**

Date: 10/29/08

Elmer Butts
By: ELMER BUTTS owner
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/3/08

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

Date: 11-03-08

By: Barbara L. Peterson
Barbara L. Peterson, Attorney
Office of Regional Counsel

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

Date: Nov. 4, 2008 By:

Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Elmer Butts, Respondent
Docket No. TSCA-07-2008-0047

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Barbara Peterson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:
Elmer Butts
37515 East Cline Road
Lone Jack, Missouri 64070

Dated: Nov 7 2008



Kathy Robinson
Hearing Clerk, Region 7