

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 the Gather Agency.

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 lease of 3750 S.E. Humboldt, Topeka Kansas, and 1816 S.E. Adams Street, Topeka, Kansas (the Properties).
8. The Properties were constructed before 1978.
9. The Properties are “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 3750 S.E. Humboldt, Topeka, Kansas on or about March 19, 2009.
13. Respondent failed to provide the lessee of 3750 S.E. Humboldt with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before the lessee was obligated under contract to lease the target housing unit.

14. On or about October 10, 2011, a lead inspection was conducted at 3750 S.E. Humboldt in accordance with the HUD guidelines for the Assessment of Lead-Based Paint and Lead-Based Paint Hazards in Target Housing. The inspection demonstrates that the target housing was found by a certified inspector to be lead-based paint free.

15. Respondent's failure to perform the acts indicated in Paragraph 13 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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.

Count 2

16. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

17. Respondent entered into a contract to lease the target housing unit located at 1816 S.E. Adams Street, Topeka, Kansas on or about December 23, 2010.

18. Respondent failed to provide the lessee of 1816 S.E. Adams Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before the lessee was obligated under contract to lease the target housing unit.

19. On or about October 10, 2011, a lead inspection was conducted at 1816 S.E. Adams Street in accordance with the HUD guidelines for the Assessment of Lead-Based Paint and Lead-Based Paint Hazards in Target Housing. The inspection demonstrates that the target housing was found by a certified inspector to be lead-based paint free.

20. Respondent's failure to perform the acts indicated in Paragraph 18 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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

21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

23. 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.

24. 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.

25. 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.

26. The effect of settlement as described in Paragraph 27 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 25 above.

27. Respondent agrees that it shall pay a civil penalty of Eight Hundred Forty Dollars (\$840.00) as set forth in Paragraph 1 of the Final Order. 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. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law and/or regulation administered by the EPA.

28. 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.

29. 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.

30. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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, 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 Eight Hundred Forty Dollars (\$840.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number TSCA-07-2011-0018 and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

On-line payments may be made through a website provided by the Department of Treasury (www.pay.gov). Enter "SFO 1.1" in the "search public forms" field. Open the form and complete the required fields.

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

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

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
Gaither Agency

Date: 11/21/11

Signature: 

Printed Name: Lee A. Feary

Title: Property Manager

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/28/11

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

Date: 11/28/11

Kelley Catlin
Kelley Catlin
Office of Regional Counsel

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

Date: Dec. 6, 2011



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

IN THE MATTER OF Gaither Agency, Respondent
Docket No. TSCA-07-2011-0018

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:

Kelley Catlin
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:

Joseph Maternowski, Esq.
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

Dated: 12/6/11




Kathy Robinson
Hearing Clerk, Region 7