

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY-REGION 7

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2014 FEB 24 PM 1:13

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Steven L. and Peggy A. Patrick) **Docket No. TSCA-07-2014-0003**
)
Respondents)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and Steven L. and Peggy A. Patrick (Respondents) 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 Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) serves as notice that the EPA has reason to believe that Respondents have violated Section 409 of the 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.

Section II

Parties

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

4. The Respondents are Steven L. and Peggy A. Patrick. Respondents are lessors of rental property in Buckner, Missouri.

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 the TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the 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 the TSCA.

Section IV

General Factual Allegations

6. Respondents are, and at all times referred to herein were, “persons” within the meaning of the TSCA.

7. Respondents are the “lessors” as defined by 40 C.F.R. § 745.103, for the lease of 502 South Sibley Street, Buckner, Missouri (the Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

Violations

10. The Complainant hereby states and alleges that Respondents have violated the TSCA and federal regulations promulgated thereunder, as follows:

Count 1

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

12. Respondents entered into a contract to lease the target housing unit located at 502 South Sibley Street, Buckner, Missouri on or about November 1, 2011.

13. Respondents failed to provide the lessees of 502 South Sibley Street, Buckner, Missouri 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 unit.

14. Respondents' 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 the TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of the TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

15. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

16. Respondents neither admit nor deny the factual allegations set forth above.

17. Respondents waive any right to contest the allegations set forth above, and their right to appeal the proposed Final Order portion of the CAFO.

18. Respondents and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

19. The undersigned representative(s) of Respondents certify that he/she/they are fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondents to it.

20. Respondents certify by the signing of this CAFO that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

21. Respondents agree that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondents shall pay a mitigated penalty of Two Thousand Four

Hundred Dollars (\$2,400.00) plus interest of Twenty-One Dollars and Four Cents (\$21.04) for a total mitigated penalty of Two Thousand Four Hundred Twenty-One Dollars and Four Cents (\$2,421.04) 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 the TSCA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of the TSCA or any other applicable law and/or regulation administered by the EPA.

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

23. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty as specified in the Final Order.

24. Respondents understand that their 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 (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. Respondents shall pay a civil penalty of Two Thousand Four Hundred Dollars (\$2,400.00), plus interest of Twenty-One Dollars and Four Cents (\$21.04) over a period of two (2) years for a total payment of Two Thousand Four Hundred Twenty-One Dollars and Four Cents (2,421.04). The total payment shall be paid in quarterly payments of Three Hundred Two Dollars and Sixty-Three Cents (\$302.63). The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order. Each subsequent payment shall be paid ninety (90) days after the previous payment. Payment of the penalty shall be made by cashier or certified check, by wire transfer, or on-line. The Payment shall reference the Docket Number on the check or wire transfer. If made by cashier or certified check, the check shall be made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:

www.pay.gov

Enter "sfo 1.1" in the search field.

Open the form and complete required files.

2. A copy of each check, transfer, or on-line payment confirmation shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENTS

Steven L. and Peggy A. Patrick

Date: 2/11/14 By: Steven L. Patrick

STEVE PATRICK _____
Print Name Title

Date: 2/11/14 By: Peggy A. Patrick

PEGGY PATRICK _____
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/19/2014



Jamie Green
Chief

Toxics and Pesticides Branch
Water, Wetlands and Pesticides Division

Date: 2/13/14



Kelley Catlin
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED.

Date: 2-24-14



KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Steven L. And Peggy A. Patrick, Respondents
Docket No. TSCA-07-2014-0003

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 emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy emailed to Respondent:

spatrick50@earthlink.net

Dated: 2/24/14



Kathy Robinson
Hearing Clerk, Region 7