



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

REPLY TO THE ATTENTION OF:

JUL 26 2010

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7670 6018

Mr. Joseph A. Presti
34616 Chope Place
Clinton Township, Michigan 48035

A & J Management Company, Inc., d/b/a A & J Rental, Inc.,
and D & T Rental, Inc. and Joseph A. Presti

TSCA-05-2010-0016

Dear Mr. Presti:

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 July 26, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,980.00 is to be paid in the manner described in paragraphs 48 thru 50. Please be certain that the number **BD 2751067X010** and the docket number are written on both the transmittal letter and on the check. Payment is due by August 25, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Mary McAuliffe, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
A & J Management Company, Inc.)
d/b/a A & J Rentals, Inc.,)
D & T Rentals, Inc. and)
Joseph A. Presti)
Clinton Township, Michigan)
)
Respondents.)
_____)

Docket No. TSCA-05-2010-0016
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic
Substances Control Act
15 U.S.C. § 2615(a)

RECEIVED

JUL 26 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (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* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondents are A & J Management Company, Inc. d/b/a A & J Rentals, Inc. and D & T Rentals, Inc., corporations authorized to do business in Michigan, and Joseph A. Presti, an individual, all with an address of 34616 Chope Place, Clinton Township, Michigan ("Respondents").

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

8. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and their right to appeal this CAFO.

Statutory and Regulatory Background

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

10. On March 6, 1996, 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) pursuant to 42 U.S.C. § 4852d.

11. 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.

12. 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.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet*; and, the signatures and dates of signature of the lessor, agent, and lessee certifying the accuracy of their statements.

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

17. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Between at least May 4, 2005 and November 7, 2005, Respondent, A & J Management Company d/b/a A & J Rentals, Inc. owned residential rental property located at 12780 Alcoy, 12621 Barlow, 14280 Eastwood, 14860 Flanders, 14753 Kilbourne, 13680 Liberal, 12421 Loretto, 14953 Maddeline, 12345 Maiden, 14411 Manning, 19960 Moenart, 14244 Troester, 14411 Troester, and 18675 Westphalia, Detroit, Michigan (Residential Rental Property).

19. Between at least May 4, 2005 and November 7, 2005, Respondent, Joseph A. Presti managed the Residential Rental Properties referenced in paragraph 18, above, and was the agent and representative of the owner, for the purpose of leasing target housing during this time period.

20. Between at least May 3, 2005 and November 11, 2005, Respondent, D & T Rentals, Inc. owned residential rental property located at 18111 Pelkey and 12406 Racine, Detroit, Michigan (Residential Rental Property).

21. Between at least May 24, 2005 and November 11, 2005, Respondent, Joseph A. Presti owned and managed residential rental property located at 12510 Laurel and 12512 Laurel, Detroit, Michigan (Residential Rental Property).

22. Between at least May 24, 2005 and November 11, 2005, Respondent, Joseph A. Presti managed the Residential Rental Properties referenced in paragraphs 21, above, and was the agent and representative of the owner, for the purpose of leasing target housing during this time period.

23. The Residential Rental Properties referenced in paragraphs 18, 20, and 21, above, were constructed prior to 1978.

24. The Residential Rental Properties and each rental unit within each property

referenced in paragraphs 18, 20, and 21, above, are “target housing” as defined in 40 C.F.R. § 745.103.

25. On October 14, 2005, Complainant issued an administrative subpoena to Joseph Presti, A & J Management Company, Inc. and D& T Rentals, Inc., under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements, contracts for sale and lead-based paint disclosure documentation for rental and sales transactions at apartment buildings, single-family dwellings owned and managed by Respondents from September 1, 2000 through date of submittal on December 22, 2005.

26. Respondent, A & J Management Company Inc. d/b/a A & J Rentals, Inc. either directly or through Respondent’s authorized agent, Joseph A. Presti, entered into the following 12 written rental agreements (“Contracts”) with individuals for the lease of Respondent’s Residential Rental Property identified below:

Address	Unit	Children under 6	Children under 18	Date of Lease
12621 Barlow		No	Yes	05/04/2005
14280 Eastwood	Lower	No	Yes	09/21/2005
14860 Flanders		No	Yes	10/12/2005
14753 Kilbourne	Upper	Yes	Yes	08/18/2005
14753 Kilbourne	Lower	No	Yes	08/18/2005
12421 Loretto		No	Yes	06/15/2005
12345 Maiden		No	No	07/26/2005
14411 Manning		No	Yes	08/18/2005
19960 Moenart		No	Yes	08/13/2005
14244 Troester		No	Yes	08/08/2005
14411 Troester		No	Yes	07/01/2005
18675 Westphalia		No	Yes	11/07/2005

27. Respondent, D & T Rentals, Inc., either directly or through Respondent’s authorized agent, Joseph A. Presti, entered into the following 22 written rental agreements (“Rental Contracts”) with individuals for the lease of Respondent’s Residential Rental Property identified below:

Address	Unit	Children under 6	Children under 18	Date of Lease
18111 Pelkey, Detroit, Michigan	#2	No	Yes	07/03/2005
	#2	No	No	11/05/2005
	#3	No	No	08/01/2005
	#4	No	No	06/15/2005
	#4	No	Yes	08/01/2005
	#5	No	Yes	06/17/2005
	#5	No	No	09/21/2005
	#7	No	Yes	10/13/2005
	#11	No	No	06/12/2005
	#11	No	No	09/28/2005
	#12	No	No	06/18/2005
	#12	No	Yes	09/23/2005
	#13	No	Yes	06/02/2005
	#13	No	Yes	11/11/2005
12406 Racine, Detroit, Michigan	#2	No	No	11/08/2005
	#2	No	No	06/17/2005
	#3	No	Yes	09/24/2005
	#6	No	No	08/04/2005
	#7	No	No	06/06/2005
	#9	No	Yes	05/03/2005
	#10	No	Yes	10/02/2005
		No	No	07/06/2005

28. Respondent, Joseph A. Presti, entered into the following 8 written rental agreements (“Contracts”) with individuals for the lease of Respondent’s Residential Rental Property identified below:

Address	Unit	Children under 6	Children under 18	Date of Lease
12510 Laurel, Detroit, Michigan	B-1	No	Yes	07/02/2005
	B-1	No	No	09/26/2005
	#7	No	No	05/24/2005
12512 Laurel, Detroit, Michigan	#6	No	Yes	07/07/2005
	#6	No	Yes	08/03/2005
	#6	No	Yes	07/25/2005
	#B2	No	Yes	06/17/2005
	#B2	No	Yes	11/10/2005

29. Each of the 42 Contracts referenced in paragraphs 26, 27 and 28, above, covered a term of occupancy greater than 100 days.

30. Between May 4, 2005 and November 7, 2005, Respondent, A & J Management Company Inc. d/b/a A & J Rentals, Inc., as the lessor of the Residential Rental Property offered for lease units in its Residential Rental Properties, and individuals entered into Contracts on the dates listed in paragraph 26, above, to lease those units.

31. Respondent, A & J Management Company Inc. d/b/a A & J Rentals, Inc. is a “lessor,” as defined by 40 C.F.R. § 745.103, since it has offered to lease the target housing referenced in paragraph 26, above.

32. Between May 4, 2005 and November 7, 2005, Respondent, Joseph A. Presti, as the manager or authorized agent of the Residential Rental Property offered for lease units in the Residential Rental Properties, and individuals entered into Contracts on the dates listed in paragraph 26, above, to lease those units.

33. Respondent, Joseph A. Presti is an “agent,” as defined by 40 C.F.R. § 745.103, since he entered into Contracts with Respondent, A & J Management Company Inc. d/b/a A & J Rentals, Inc., for the purpose of leasing the target housing referenced in paragraph 26, above.

34. Each individual who signed a lease to pay rent in exchange for occupancy of a unit or dwelling referenced in paragraph 26, above, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

35. Between May 3, 2005 and November 11, 2005, Respondent, D & T Rentals, Inc., as the lessor of the Residential Rental Property offered for lease units in its Residential Rental Properties, and individuals entered into Contracts on the dates listed in paragraph 27, above, to lease those units.

36. Between May 24, 2005 and November 11, 2005, Respondent, Joseph A. Presti, as the lessor of the Residential Rental Property offered for lease units in its Residential Rental

Properties, and individuals entered into Contracts on the dates listed in paragraph 28, above, to lease those units.

37. Respondents, D & T Rentals, Inc. and Joseph A. Presti are “lessors,” as defined by 40 C.F.R. § 745.103, since they have offered to lease the target housing referenced in paragraphs 27 and 28, above.

38. Between May 4, 2005 and November 11, 2005, Respondent, Joseph A. Presti, as the manager or authorized agent of the Residential Rental Property offered for lease units in the Residential Rental Properties, and individuals entered into Contracts on the dates listed in paragraph 27, above, to lease those units.

39. Respondent, Joseph A. Presti is an “agent,” as defined by 40 C.F.R. § 745.103, since he entered into Contracts with Respondent, D & T Rentals, Inc., for the purpose of leasing the target housing referenced in paragraph 27, above.

40. Each individual who signed a lease to pay rent in exchange for occupancy of a unit or dwelling referenced in paragraphs 27 and 28, above, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

41. The parties entered into tolling agreements to toll any statute of limitations potentially applicable to EPA’s claims against Respondents.

42. Each individual who signed a lease to pay rent in exchange for occupancy of a unit or dwelling referenced in paragraphs 27 and 28, above, became a “lessee,” as defined in 40 C.F.R. § 745.103.

43. Respondents failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the

lease of Residential Rental Property at the addresses set forth in paragraphs 26, 27 and 28, above, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

44. Respondents failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraphs 26, 27 and 28, above, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

45. Respondents failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraphs 26, 27 and 28, above, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

46. Respondents failed to include the signatures of the lessor, agent and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Residential Rental Property at the addresses set forth in paragraphs 26, 27 and 28, above, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

47. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$4,980.00, with interest. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the

violations, and, with respect to Respondents, ability to pay, effect on ability to continue to do business, any history of such prior violations and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

48. Respondents must pay the civil penalty payment of \$4,980.00, with interest, in accordance with the following schedule: within 30 days after the effective date of this CAFO, Respondents must pay the first penalty payment of \$1,245.00; within 4 months of the effective date of the CAFO, Respondents must pay the second penalty payment of \$1,254.21; within seven months of the effective date of the CAFO, Respondents must pay the third penalty payment of \$1,253.19; and within 13 months of the effective date of this CAFO, Respondents must pay the fourth penalty payment of \$1,249.09. Respondents shall make each civil penalty payment by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

49. The check must state the case title, In the Matter of A & J Management Company, Inc. d/b/a A & J Rentals, Inc., D & T Rentals, Inc. and Joseph A. Presti, the docket number of this CAFO, and the billing document number.

50. A transmittal letter stating Respondents' names, the case title, each Respondent's complete addresses, the case docket number and the billing document number must accompany the payment. Respondents must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

51. This civil penalty is not deductible for federal tax purposes.

52. If Respondents do not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

54. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

55. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

56. This CAFO does not affect Respondents' responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

57. A & J Management Company, Inc. d/b/a A & J Rentals, Inc., and D & T Rentals, Inc., corporations authorized to do business in Michigan, and Joseph A. Presti, each certify to their respective compliance with the Lead Act and the Disclosure Rule.

58. The terms of this CAFO bind Respondents, and each Respondent's successors and assigns.

59. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

60. Each party agrees to bear its own costs and attorney's fees in this action.

61. This CAFO constitutes the entire agreement between the parties.

In the Matter of:

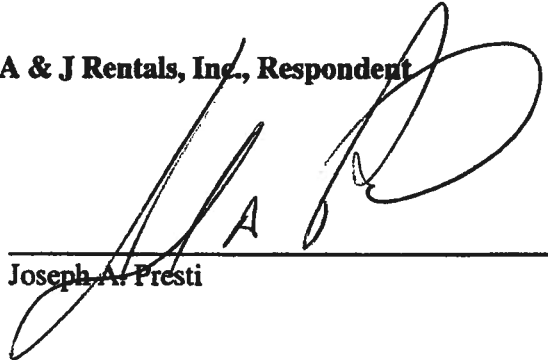
A & J Management Company, Inc., d/b/a A & J Rentals, Inc.,

D & T Rentals, Inc., and Joseph A. Presti

Docket No. TSCA-05-2010-0016

A & J Management Company, Inc. d/b/a A & J Rentals, Inc., Respondent

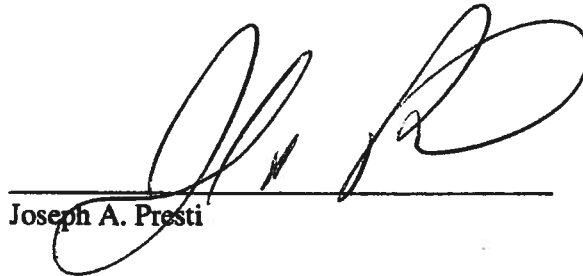
6-30-10
Date



Joseph A. Presti

D & T Rentals, Inc., Respondent

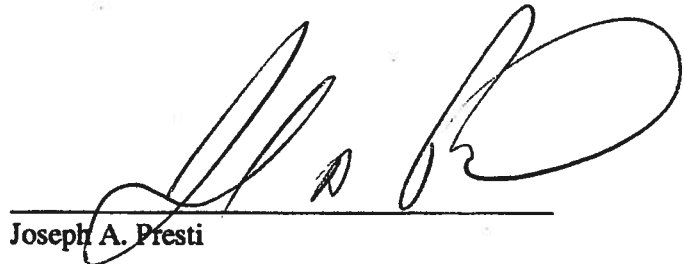
6-30-10
Date



Joseph A. Presti

Joseph A. Presti, Respondent

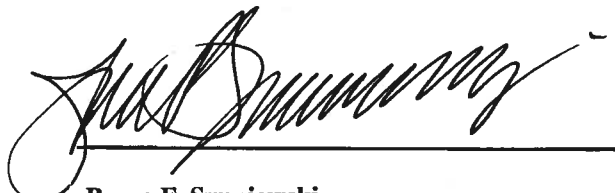
6-30-10
Date



Joseph A. Presti

United States Environmental Protection Agency, Complainant

7/20/10
Date




Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

In the Matter of:
A & J Management Company, Inc., d/b/a A & J Rentals, Inc.,
D & T Rentals, Inc., and Joseph A. Presti
Docket No. TSCA-05-2010-0016

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-28-20
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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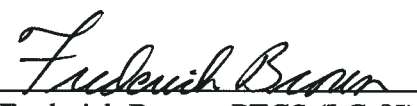
CERTIFICATE OF SERVICE

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 Joseph A Presti, was filed on July 26, 2010, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7670 6018 to:

Mr. Joseph A. Presti
34616 Chope Place
Clinton Township, Michigan 48035

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Mary McAuliffe, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


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

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