

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)
)
LORRAINE FREY) Docket No. TSCA-07-2008-0039
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Lorraine Frey (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 Lorraine Frey, 3100 Bellerive Drive, St. Louis, MO 63121.

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

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 multiple dwelling units in St. Louis, Missouri, located in the following addresses (“the Properties”):

- | | |
|-----------------------------|------------------------|
| a. 5713 Ramsey Drive | h. 9217 Bristol Avenue |
| b. 4149 Springdale Avenue | i. 6927 Corbitt Avenue |
| c. 6440 Myron Avenue | j. 7616 Stanwood Drive |
| d. 2434 N and S Road | k. 9412 Liberty Avenue |
| e. 6929 Julian Avenue | l. 3822 N Hanley |
| f. 3344 Lucal and Hunt Road | m. 43 N Dade |
| g. 8517 Katherine Avenue | |

8. The Properties were constructed before 1978, and housing units in the Properties 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

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. § 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.

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. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits at 6440 Myron Avenue, St. Louis, Missouri, 63121, which is target housing owned by Respondent. Respondent shall by and through a certified lead abatement contractor, at the cost of Six Thousand Nine Hundred and Thirty Dollars (\$6,930), perform stripping, priming and repainting of areas, and removal and replacement of 8 windows within the target housing in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

21. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to the Missouri Department of Health & Senior Services Lead Licensing Program informing the State of its intent to perform a lead-based paint abatement SEP and requesting procedural information pertaining to performance of the SEP. A copy of this letter will be sent to the St. Louis County Health Department.

22. The total expenditure for the SEP shall not be less than Six Thousand Nine Hundred and Thirty Dollars (\$6,930) and the SEP shall be completed no later than 90 days of the effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with Federal, State, and local laws and regulations.

23. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the State agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented.
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks.

- (iii) The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- (iv) The report shall be directed to the following:

As to EPA:

Stephven Richard, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

As to the State:

Brandon Rekus
Missouri Department of Health and Senior Services
930 Wildwood
Jefferson City, MO 65109

24. If the SEP referenced in Paragraph 20 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of Eight Thousand Three Hundred Sixteen Dollars (\$8,316)

minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying the EPA Region 7 contact identified in Paragraph 23 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

25. Respondent certifies that it is not required to perform or develop the SEP by any Federal, State, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with State or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, any credit in any other enforcement action for the SEP.

26. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall including the following language: "This project

was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency.”

27. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Seven Hundred and Seventy Dollars (\$770.00) to be paid within thirty (30) days of the effective date of the Final Order. 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.

28. The effect of settlement described in Paragraph 27 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.

29. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 27 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.

30. No portion of the civil penalty or interest paid or monies expended on the SEP 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.

31. 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 Hundred Seventy Dollars (\$770) within thirty (30) days of the effective date of this Final Order. 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. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. 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 Lorraine Frey
Docket No. TSCA-07-2008-0039

**RESPONDENT
LORRAINE FREY**

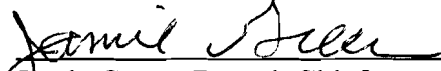
Date: 9/19/08

By: Lorraine Frey
Lorraine Frey Owner
Print Name Title


COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

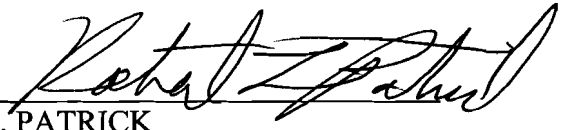
Date: 9/24/08

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

Date: 9/24/08

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

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

Date: September 30, 2008 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Attachment A

SEP Work Plan

Abatement SEP Work Plan
Respondent: *Lorraine Frey*

1. Address of target housing: 6440 Myron Avenue, Saint Louis, MO 63121
2. Property Owner: *Lorraine Frey, 3100 Bellerive Drive, Saint Louis, MO 63121*
3. Property is currently occupied.
4. Scope of work:

Lead-based paint abatement work to be performed at the target housing identified above will include stripping, priming and repainting of areas, and removal and replacement of 8 lead-based painted windows with lead free windows.

All work must be performed by and/or under the supervision of licensed/certified lead-based paint professionals, following the required safe work practices and all other requirements. All work must be performed in accordance with all applicable federal, state, and local laws and regulations.

5. Licensed lead-based professionals/firm:
Chuck Norris, Sherlock Environmental Services LLC, 13278 La Counte Court, Saint Louis, MO 63128, (314)849-5819
6. Cost Estimate: \$6,930
7. Planned work start date: _____
(to be filled out by respondent)

The Missouri Department of Health and Human Services Lead Licensing Program must receive written notice before the work is started on a lead-based paint abatement project. Within thirty days of the effective date of the consent agreement/final order, this written notification must be provided to the state, and copies must be provided to the Saint Louis County Health Department and EPA Region 7.

8. Estimated work completion date: 10/30/08
(to be filled out by respondent)

All work must be completed within ninety days of the effective date of the consent agreement/final order.

9. Report completion date: _____
(to be filled out by EPA)

10. *The SEP Completion Report must be completed and submitted to EPA Region 7, and a copy sent to the state, within thirty days after the completion of the SEP. This report must include:*

- *A detailed description of the SEP as implemented*
- *Itemized costs, documented by copies of purchase orders, receipts or*

Mailing Addresses for Notifications and Reports described above:

EPA Region 7

901 North 5th Street

WWPD/TOPE

Attention: Stephven Richard

901 North 5th Street

Kansas City, KS 66101

Missouri Department of Health and Senior Services

Lead Licensing Program

Attention: Brandon Rekus

930 Wildwood

Jefferson City, MO 65109

Saint Louis County Health Department

Lead Poisoning Prevention & Healthy Homes Branch

111 South Meramec Avenue

Clayton, MO 63105

IN THE MATTER OF Lorraine Frey, Respondent
Docket No. TSCA-07-2008-0039

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

Original by Certified Mail Return Receipt to:

Lorraine Frey
3100 Bellerive Drive
St Louis, Missouri 63121

Dated: 9/30/08


Kathy Robinson
Hearing Clerk, Region 7