

FILED

May 6, 2024

12:34PM

**U.S. EPA REGION 7
HEARING CLERK**

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

In the Matter of:

Semo Management Group, LLC,

Respondent.

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Docket No. TSCA-07-2024-0068

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant) and Semo Management Group, LLC (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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

Parties

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

3. The Respondent is a limited liability company, organized under the laws of and authorized to do business in the state of Missouri, with a principal place of business of 603 South Main Street, Sikeston, Missouri 63801.

Statutory and Regulatory Background

4. 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.

5. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. § 745.107 (disclosure requirements for sellers and lessors), 40 C.F.R. § 745.110 (opportunity to conduct an evaluation), 40 C.F.R. § 745.113 (certification and acknowledgment of disclosure), or 40 C.F.R. § 745.115 (agent responsibilities), is a violation of 42 U.S.C. § 4852d(b)(5) and of Section 409 of TSCA, 15 U.S.C. § 2689. 42 U.S.C. § 4852d(b)(5) provides that it shall be a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689 for any person to fail or refuse to comply with any rule issued under 42 U.S.C. § 4852d. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart F.

6. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), authorizes the EPA Administrator to assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limited penalties assessed for violations of 42 U.S.C. § 4852d(b)(5), assessed under Section 16 of TSCA, 15 U.S.C. § 2615, to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. 114-74, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$21,699 for violations that occurred after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

General Factual Allegations

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

8. Respondent is an “agent” as defined by 40 C.F.R. § 745.103, for the lease of 2010 State Highway 77, Charleston, Missouri 63834 and 34 Green Meadows Drive, Sikeston, Missouri 63801 (the “Properties”).

9. The Properties were constructed before 1978 and are “target housing” as defined by 40 C.F.R. § 745.103.

10. On or about August 31, 2023, EPA personnel met with representatives of Respondent to evaluate Respondent’s compliance with TSCA and the requirements of 40 C.F.R.

Part 745, Subpart F. On or about September 11, 2023, EPA personnel requested and received information and documents from Respondent regarding leases in which Respondent had represented lessors as an agent, including the leasing documents for the Properties (collectively, the “EPA’s Inspection”).

Allegations of Violation

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

Count 1

12. The facts stated in Paragraphs 1 through 11 above are herein incorporated.

13. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor of target housing provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee is obligated under any contract to lease target housing that is not an otherwise exempt transaction.

14. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent representing a lessor is required to either perform or otherwise ensure the lessor’s compliance with their obligation to provide an EPA-approved lead hazard information pamphlet under 40 C.F.R. 745.107(a)(1).

15. During the EPA’s Inspection, it was determined that Respondent had acted as an agent on behalf of the lessors in the leasing of the Properties.

16. During the EPA’s Inspection, it was determined that Respondent had neither provided nor ensured that the lessors provided the EPA-approved lead hazard information pamphlet to the lessees of the Properties prior to the execution of the subject leases.

17. Respondent’s failures to either provide or ensure that the lessors provided the EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1), 745.115(a)(2), and 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of the TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of the TSCA, 15 U.S.C. § 2615.

Consent Agreement

18. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;

- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

19. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

20. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

21. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: brandon@smgmo.com.

Penalty Payment

22. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of five thousand seven hundred sixty-five dollars (\$5,765.00) as set forth below.

23. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify 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:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

24. Respondent understands that its failure to timely pay any portion of the civil penalty 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including

processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

25. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

26. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

27. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

28. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

29. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

30. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

General Provisions

31. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

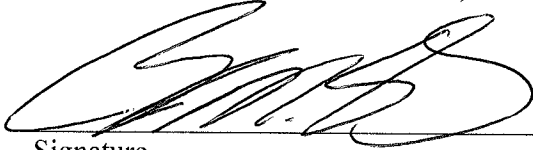
32. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

33. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

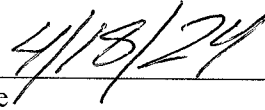
34. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT

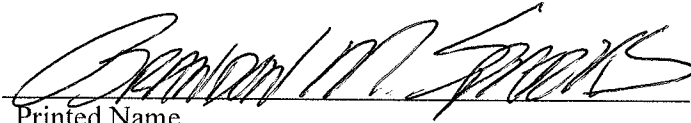
SEMO MANAGEMENT GROUP, LLC



Signature



Date



Printed Name



Title

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Jodi Bruno
Acting Director
Enforcement and Compliance Assurance Division

Date

Sam Bennett
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to Section 16(a) of 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Semo Management Group, LLC, EPA Docket No. TSCA-07-2024-0068, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Sam Bennett
Office of Regional Counsel
bennett.sam@epa.gov

Christine Hoard
Enforcement and Compliance Assurance Division
hoard.christine@epa.gov

Milady Peters
Office of Regional Counsel
peters.milady@epa.gov

Copy via Email to Respondent:

Brandon Sparks
Semo Management Group, LLC
brandon@smgmo.com

Dated this _____ day of _____, _____.

Signed