

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY -  
REGION 7

BEFORE THE ADMINISTRATOR

2012 SEP 18 AM/PM 2:47

In the Matter of: )

Steven R. Ames )  
d/b/a Ames Properties )  
11 South 8<sup>th</sup> Street )  
Marshalltown, Iowa 50158 )

Respondent )

Docket No. TSCA-07-2012-0020

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region 7 (EPA) and Steven R. Ames, d/b/a Ames Properties, (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 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 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.

**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 an individual who owns and leases residential real property in Marshalltown, Iowa.

**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 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 certain residential units within the City of Marshalltown, Iowa, and which are located at 206 ½ South 3<sup>rd</sup> Avenue, Apt. #1; 206 ½ South 3<sup>rd</sup> Avenue, Apt. #2; 309 Lee Street; and 311 South 2<sup>nd</sup> Street, Apt. #2. The residences were all constructed before 1978.

8. The units described above are "target housing" as defined by 40 C.F.R. § 745.103.

**Violations**

9. On August 16, 2011, EPA conducted an evaluation of Respondent's compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondent as part of that evaluation. Based upon that evaluation, 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 9 above are herein incorporated.

11. On December 6, 2005, the City of Marshalltown notified Respondent of lead-based paint hazards present at the residential housing unit located at 206 ½ South 3<sup>rd</sup> Avenue,

Apt. #1, Marshalltown, Iowa. The notification was in writing and Respondent acquired documents and records pertaining to lead-based paint and lead-based paint hazards present on the property.

12. Respondent entered into a contract to lease the target housing unit located at 206 ½ South 3<sup>rd</sup> Avenue, Apt. #1, Marshalltown, Iowa on June 1, 2011.

13. Respondent failed to provide the lessee of the target housing unit described in this count with any available records or reports pertaining to lead-based paint or lead-based paint hazards before the lessee became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(4).

14. Respondents' failure to perform the acts indicated in this count is a violation of 40 C.F.R. § 745.107(a)(4) and, in accordance with 40 C.F.R. § 745.118(e), is a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### Count 2

15. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

16. In a December 5, 2005 letter, the City of Marshalltown notified Respondent of lead-based paint hazards present at the residential housing unit located at 206 ½ South 3<sup>rd</sup> Avenue, Apt. #2, Marshalltown, Iowa. The notification was in writing and Respondent acquired documents and records pertaining to lead-based paint and lead-based paint hazards present on the property.

17. Respondent entered into a contract to lease the target housing unit located at 206 ½ South 3<sup>rd</sup> Avenue, Apt. #2, Marshalltown, Iowa on June 1, 2011.

18. Respondent failed to provide the lessee of the target housing unit described in this count with any available records or reports pertaining to lead-based paint or lead-based paint hazards before the lessee became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(4).

19. Respondents' failure to perform the acts indicated in this count is a violation of 40 C.F.R. § 745.107(a)(4) and, in accordance with 40 C.F.R. § 745.118(e), is a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### **Count 3**

20. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

21. On December 3, 2003 and on May 4, 2004, the city of Marshalltown notified Respondent of lead-based paint hazards present at the residential housing unit located at 309 Lee Street, Marshalltown, Iowa. The notification was in writing and Respondent acquired documents and records pertaining to lead-based paint and lead-based paint hazards present on the property.

22. Respondent entered into a contract to lease the target housing unit located at 309 Lee Street, Marshalltown, Iowa on April 26, 2011.

23. Respondent failed to disclose to the lessee of the target housing unit described in this count of any known lead-based paint or lead-based paint hazards in the target housing before the lessee became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(2).

24. Respondent failed to provide the lessee of the target housing unit described in this count with any available records or reports pertaining to lead-based paint or lead-based paint

hazards before the lessee became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(4).

25. Respondents' failure to perform the acts indicated in this count is a violation of 40 C.F.R. §§ 745.107(a)(2) and (4) and, in accordance with 40 C.F.R. § 745.118(e), are violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

#### **Count 4**

26. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

27. On September 21, 2007, the City of Marshalltown notified Respondent of lead-based paint hazards present at the residential housing unit located at 311 South 2<sup>nd</sup> Street, Apt. #2, Marshalltown, Iowa. The notification was in writing and Respondent acquired documents and records pertaining to lead-based paint and lead-based paint hazards present on the property.

28. Respondent entered into a contract to lease the target housing unit located at 311 South 2<sup>nd</sup> Street, Apt. #2, Marshalltown, Iowa on February 21, 2011.

29. Respondent failed to provide the lessee of the target housing unit described in this count with any available records or reports pertaining to lead-based paint or lead-based paint hazards before the lessee became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(4).

30. Respondents' failure to perform the acts indicated in this count is a violation of 40 C.F.R. § 745.107(a)(4) and, in accordance with 40 C.F.R. § 745.118(e), is a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**Section V**  
**Consent Agreement**

31. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth herein.

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

33. Respondent waives his right to contest any issue of fact or law set forth above and his right to appeal the Final Order accompanying this Consent Agreement.

34. 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.

35. Respondent certifies by the signing of this Consent Agreement and Final Order that he is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

36. 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.

37. This CAFO addresses and resolves all civil claims for the TSCA violations and facts alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law. Respondent understands that 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.

38. The effect of settlement described in paragraph 37 is conditional upon the accuracy of Respondent's representations to EPA as memorialized in paragraph 35 of this Consent Order.

**Section VI**  
**Final Order**

Pursuant to the provisions of 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 Seventeen Thousand Eight Hundred and Sixty-four Dollars (\$17,864) according to the schedule, which is attached hereto and marked "Exhibit 1". The payment shall be made at the address below. The 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 979077  
St. Louis, MO 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

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



*In the Matter of*  
*Steven R. Ames, d/b/a Ames Properties*  
*TSCA-07-2012-0020*

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 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Robert W. Richards, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

*In the Matter of  
Steven R. Ames, d/b/a Ames Properties  
TSCA-07-2012-0020*

**RESPONDENT**

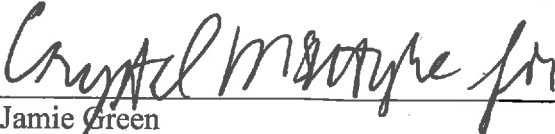
Date: 9-13-12

Steven R Ames  
Steven R. Ames, d/b/a Ames Properties

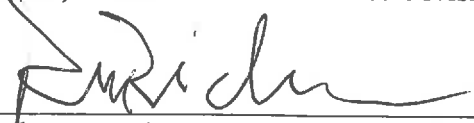
*In the Matter of  
Steven R. Ames, d/b/a Ames Properties  
TSCA-07-2012-0020*

**COMPLAINANT  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 9/18/12

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

Date: 9/18/12

By:   
Robert W. Richards  
Attorney  
Office of Regional Counsel

*In the Matter of*  
*Steven R. Ames, d/b/a Ames Properties*  
*TSCA-07-2012-0020*

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

Date: Sept. 18, 2012



---

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

## Exhibit 1

Steven R. Ames, d/b/a Ames Properties

Nominal Annual Rate: 1.000 %

AMORTIZATION SCHEDULE - U.S. Rule (no compounding)

<b>Payment number</b>	<b>Date</b>	<b>Payment amount</b>	<b>Interest</b>	<b>Principal</b>	<b>Penalty balance</b>
					17,864.00
1	10/19/2012	4,494.32	46.13	4,448.19	13,415.81
2	01/19/2013	4,494.32	33.54	4,460.78	8,955.03
3	04/19/2013	4,494.32	22.39	4,471.93	4,483.10
4	07/19/2013	4,494.32	11.22	4,483.10	0.00

IN THE MATTER OF Steven R. Ames d/b/a Ames Properties, Respondent  
Docket No. TSCA-07-2012-0020

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:

Robert W. Richards  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Mr. Steven R. Ames  
d/b/a/ Ames Properties  
11 South 8<sup>th</sup> Street  
Marshalltown, Iowa 50158

Dated: 9/18/12



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7