

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. FIFTH STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

Anawim Housing, Inc.)
921 Sixth Avenue, Suite B)
Des Moines, Iowa 50309-1227)

Respondent.)

Docket No. TSCA-07-2008-0034

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Anawim Housing, Inc. (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).

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 VII.

4. The Respondent is Anawim Housing, Inc., a nonprofit corporation authorized to conduct business in the state of Iowa.

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 lessor 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.

Alleged Violations

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

Count I

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

8. The Properties leased by Respondent were constructed before 1978; therefore, they are "target housing" as that term is defined by 40 C.F.R. § 745.103.

9. Respondent is the "agent," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 1635 Sixth Avenue, Number 10, Des Moines, Iowa.

10. Information collected during an EPA review of Respondent's records as a result of an information request letter sent on July 10, 2007, shows that Respondent entered into a contract to lease the property located at 1635 Sixth Avenue, Number 10, on January 1, 2006.

11. Information collected shows that Respondent failed to provide the lessee of the Property managed by Respondent with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under the contract to lease the target housing units managed by Respondent.

12. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 209 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.

Count II

13. The facts referenced in Paragraphs 1 through 8 are herein incorporated by reference.

14. Respondent is the "agent," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 1235 Seventh Street, Des Moines, Iowa.

15. Information collected during an EPA review of Respondent's records as a result of an information request letter sent on July 10, 2007, shows that Respondent entered into a contract to lease the property located at 1235 Seventh Street, on September 15, 2006.

16. Information collected shows that Respondent failed to perform the following acts before the lessee was obligated under a contract to lease the target housing unit:

- include the Lead Warning Statement;
- include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of same;
- include a list of any records or reports available to lessor pertaining to lead-based paint/hazards or indicating no such records/reports available;
- include a statement affirming lessee's receipt of required information;
- include the acknowledgement by the agent that it has informed lessor of lessor's legal obligations; and
- include lessor and agent signatures certifying to accuracy of statements/information.

17. Respondent's failure to perform the acts indicated in Paragraph 16 above are violations of 40 C.F.R. § 745.113(b)(1) through 40 C.F.R. § 745.113(b)(6) 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.

Count III

18. The facts referenced in Paragraphs 1 through 8 are herein incorporated by reference.

19. Respondent is the "agent," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 1635 Sixth Avenue, Number 11, Des Moines, Iowa.

20. Information collected during an EPA review of Respondent's records as a result of an information request letter sent on July 10, 2007, shows that Respondent entered into a contract to lease the property located at 1635 Sixth Avenue, Number 11, on January 28, 2004.

21. Information collected shows that Respondent failed to perform the following acts before the lessee was obligated under a contract to lease the target housing unit:

- include the Lead Warning Statement;
- include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of same;
- include a list of any records or reports available to lessor pertaining to lead-based paint/hazards or indicating no such records/reports available;
- include a statement affirming lessee's receipt of required information;
- include the acknowledgement by the agent that it has informed lessor of lessor's legal obligations; and
- include lessor and agent signatures certifying to accuracy of statements/information.

22. Respondent's failure to perform the acts indicated in Paragraph 21 above are violations of 40 C.F.R. § 745.113(b)(1) through 40 C.F.R. § 745.113(b)(6) 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

23. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

24. Respondent admits the factual allegations set forth above.

25. 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.

26. 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.

27. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

28. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty of Five Thousand Seven Hundred Forty-Eight Dollars (\$ 5,748), as specified in the Final Order, to be paid within thirty (30) days of the effective date of the Final Order.

29. Payment of this civil penalty in full 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.

30. 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: Respondent shall, by and through a certified lead abatement contractor, perform abatement in the form of enclosure on the external siding, abate the stairwell and stairs to the basement, and abate bare soil located on the northeast and south side of a home located at 1315 Sixth Avenue, Des Moines, Iowa. Lead testing conducted by the Polk County Health Department identified elevated levels of lead paint in following areas in and around 1315 Sixth Avenue: exterior siding, window trim, door trim, threshold, other exterior trim, interior window trough in the southeast bedroom closet, basement stairwell and stairs, and bare soil on the northeast and southern sides of the home. Respondent agrees to comply with the HUD guidelines for the abatement and enclosure projects, and conduct clearance testing. The SEP is further described in Attachment A to this CAFO.

31. 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 Iowa Department of Public Health, Bureau of Lead Poisoning Prevention informing the state of its intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

32. The total expenditure for the SEP shall be not less than Sixteen Thousand Four Hundred Dollars (\$ 16,400) and the SEP shall be completed no later than ninety (90) days of the effective date of this CAFO. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

33. Respondent agrees that the construction work on all SEPs referenced in Paragraph 30 above will be performed by entities licensed and/or certified to handle, inspect, and/or dispose of lead-based-paint contaminated waste.

34. 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 final abatement report, as required by state law; and
- (iv) The following certification signed by an officer of 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.

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

As to EPA:
Crystal McIntyre
WWPD/TOPE
U.S. Environmental Protection Agency
Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

As to the state:
Rita Gergely, Bureau Chief
Lucas State Office Building
321 E. 12th Street
Des Moines, Iowa 50319-0075.

35. In the event that Respondent fails to complete the SEP in accordance with this Order

or to the extent that actual expenditures for the SEP do not equal or exceed the amount of money required to be expended on the SEP as set forth above, Respondent shall be liable for stipulated penalties as follows:

(i) Except as provided in subparagraph ii immediately below, for a SEP which has not been completed to the satisfaction of EPA in accordance with the terms of this Order, Respondent shall pay a stipulated penalty of Sixteen Thousand Four Hundred Dollars (\$ 16,400).

(ii) If the SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty of Two Thousand Dollars (\$ 2,000).

(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.

36. 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, credit in any other enforcement action for the SEP.

37. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

38. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States

Environmental Protection Agency.”

39. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 28 above or any portion of a stipulated penalty as stated in Paragraph 35 above 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.

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 mitigated civil penalty of Five Thousand Seven Hundred Forty-Eight Dollars (\$ 5,748.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and Docket No. TSCA-07-2008-0034, and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 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, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

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 VII
901 N. Fifth Street
Kansas City, Kansas 66101; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. Fifth 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. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

IN THE MATTER OF Anawim Housing, Inc.
Docket No. TSCA-07-2008-0034

RESPONDENT
Anawim Housing, Inc.

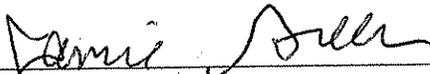
Date: 11/12/08

By: Stella Neill RSM

Stella Neill, RSM Pres/Exec Director
Print Name Title

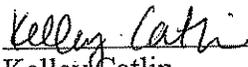
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/12/08



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

Date: 11/12/08



Kelley Catlin
Office of Regional Counsel

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

Date: Nov. 17, 2008 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region VII

Attachment A

SEP Proposal for Environmental Protection Agency

Anawim Housing is general partner for the Riverbend Duplexes LP and leases the unit at 1315 Sixth Avenue. This unit is currently leased to a family composed of a single mother and four children.

The home was tested throughout for lead content and the report is attached to this proposal. Lead was found in three areas: exterior siding, bare ground surface around the building, and basement stair treads. Anawim Housing will address all three lead issues in this home. All work performed on this building will be done in compliance with HUD guidelines.

Attached to this proposal is a signed acceptance of a bid to perform this work. The signed bid states the cost of the work and the estimated completion date for the work. The timeline is dependent on the weather but we fully expect this timeline to be workable. Attached with this bid is the documentation that qualifies this contractor to perform this work.

Acceptance of Bid
Lead abatement / Vinyl Siding
1315 6th Ave
October 28, 2008

Using LEAD SAFE WORK PRACTICES T.C. Construction, General Contractor, And Certified Lead Abatement Contractor will complete the following items to meet Polk County Health Dept. guidelines.

1. To meet Lead Abatement requirements – Supply and install vinyl siding, fish scale and coil stock to cover all exterior wood and trim on the house, foundation, and front porch (not including porch floor). This will include all door jambs, thresholds, window seals (gutters), and wood openings in the foundation.
 - a. **Siding Brand:** Certinteed "Main Street" Dbl 4"
 - b. **Siding Color:** Heritage Cream
 - c. **Fish Scale Color:** Sandstone Beige
 - d. **Coil (trim) Color:** Burgundy (To match existing)
2. To meet Lead Abatement requirements - supply and install the proper ground cover and pulverized brick on all bare soil surrounding the house
3. To meet Lead Abatement requirements – Remove and replace basement stair treads using treated lumber.

Schedule: All work *will* be completed in a workmanship like, and expedient fashion. Owner **MUST** give notice at least 24 hours in advance prior to entering an occupied unit; contractor will provide a schedule in advance of projected start times for each unit
Payment: Unpaid balance due in full upon completion, and final inspection of owner

A signed copy of this document must be attached to a detailed proposal from the contractor.

(DUE PRIOR TO START)

Total Bid: \$16,400.00 Deposit: \$1,640.00 BALANCE: \$14,760

Estimated Start Date: Nov 15th Estimated Completion Date: Nov 30th

Contractor: T.C. Construction Address: 2212 Lyon

Signed: [Signature] Date: 10-28-08

Anawim Housing, 921 6th Ave Suite B, Des Moines, IA, 50309

Accepted By: [Signature] Date: 10-28-08

T.C. CONSTRUCTION GENERAL CONTRACTOR & CERTIFIED LEAD ABATEMENT FEDERAL CONTRACTOR

2212 Lyon Street
Des Moines, IA 50317
(515) 263-8902

Project Contact Person: Rand Good Telephone 515-559-6816

Project Address: 1315 6th Ave City Des Moines

Proposal Description:
"Lead Abatement Project"

Install Vinyl Siding covering building
Install Alum wrap on windows and porch
Replace basement stairs.

Alum wrap west door, trench and pour rock on

Labor And Materials Estimate Actual: \$ 16,400.00

Cash Deposit: \$ *Balance due in cash upon job completion

I accept reject this business proposal for the above mentioned job.

Client signature: Bid only Date

TC Construction operates with open communication with our clients. If the amount of the job needs to be altered due to unforeseen issues, TC Construction will contact you to make sure you understand the change of service and ok any additions to the agreed upon charges. TC Construction works hard to make you happy with your results.

North East and South on bare soil (Amends)

[Signature]

Iowa Department of Public Health

T. C. Construction

2212 Lyon Street

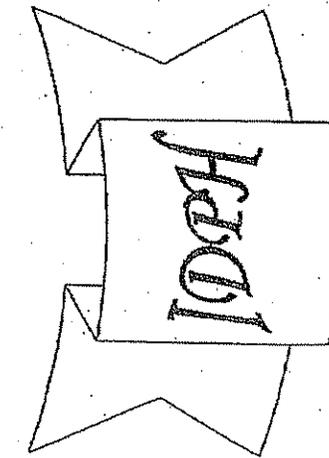
Des Moines, IA 50317

is certified as a firm under 641-Chapter 70, IAC

For the following categories: Lead Abatement Contractor

Certification No.: IA2005-FIRM-0005

Issued: August 5, 2008 and Expires: August 5, 2009



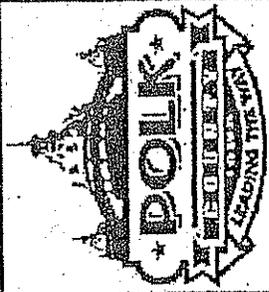
Lead Poisoning Prevention Program

Sylvia Gieseke

Sylvia Gieseke, Certification Manager

POLK COUNTY PUBLIC WORKS

5885 N.E. 14th Street
Des Moines, Iowa 50313
(515)286-3376



CERTIFICATE OF TRAINING

This is to certify that

THOMAS CARRINGTON
T.C. CONSTRUCTION
2212 LYON ST.
DES MOINES, IA 50317

has successfully completed the 8 -hour Iowa Department of
Public Health Lead-Abatement Refresher Training held in
Des Moines, Iowa on June 7, 2007 with a test score of
96%.

Laurie Riggs,
Training Manager

Larry Lagna,
Director

2007-LAF001

IN THE MATTER OF Anawim Housing, Inc., Respondent
Docket No. TSCA-07-2008-0034

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:

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

Copy by Certified Mail Return Receipt to:

Robert J. Douglas
Davis Brown Law Firm
The Davis Brown Tower
215 10th Street, Ste. 1300
Des Moines, Iowa 50309

Dated: 11/19/08



Kathy Robinson
Hearing Clerk, Region 7