

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

In the Matter of )  
)  
Margery E. Dudley d/b/a Dudley Rentals ) Docket No. TSCA-07-2008-0028  
Omaha, Nebraska )  
)  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Margery E. Dudley d/b/a Dudley Rentals (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 Margery E. Dudley d/b/a Dudley Rentals, 3817 North 85<sup>th</sup> Avenue, Omaha, Nebraska 68134.

**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.

**Alleged Violations**

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

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

8. Respondent is the lessor, as that term is defined by 40 C.F.R. § 745.103, of property located at 4921 North 28<sup>th</sup> Avenue, Omaha, Nebraska 68104, and 3539 North 45<sup>th</sup> Avenue, Omaha, Nebraska 68104.

9. The property referenced above was constructed before 1978; therefore, it is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected on or about February 12, 2007, shows that on January 5, 2007, Respondent failed to provide the lessee of the property located at 4921 North 28<sup>th</sup> Avenue with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing. Also, the information shows that on February 3, 2007, Respondent failed to provide the lessee of the property located at 3539 North 45<sup>th</sup> Avenue with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing

11. Respondent's failure to provide EPA-approved lead hazard information pamphlets is a violation of 40 C.F.R. § 745.107(a)(1) and 745.115, 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 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**

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

13. Respondent admits the factual allegations set forth above.

14. 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.

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

16. 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, and that there are no outstanding abatement orders pending on any other target housing owned by the Respondent.

17. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of One Thousand Five Hundred Forty Dollars (\$1,540) to be paid within thirty (30) days of the effective date of the Final Order.

18. 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 3543 North 45<sup>th</sup> Avenue, Omaha, Nebraska 68104, which is target housing owned by Respondent. Respondent shall, by and through a certified lead abatement contractor, at the cost of Thirteen Thousand Eight Hundred Sixty Dollars (\$13,860), perform striping, priming and repainting of areas, and removal and replacement of windows within the target housing in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

19. 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 Nebraska Department of Health and Human Services, Regulation & Licensure, Lead-Based Paint Program, Post Office Box 95007, Lincoln, NE 68509-5007, 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 Douglas County Health Department.

20. The total expenditure for the SEP shall not be less than Thirteen Thousand Eight Hundred Sixty Dollars (\$13,860) 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.

21. 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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

As to the State:

Doug Gillespie  
Douglas County Health Department  
Omaha/Douglas Civic Center  
1819 Farnam Street, Room 401  
Omaha, Nebraska 68183

22. If the SEP referenced in Paragraph 18, 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 Thirteen Thousand Eight Hundred Sixty Dollars (\$13,860) minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 100% of the projected costs of the SEP. For the SEP project, the following

instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend at least 90% of the Thirteen Thousand Eight Hundred Sixty Dollars (\$13,860) in projected costs in a manner acceptable to EPA.

(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 21, 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.

23. 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.

24. 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."

25. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 17, 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.

**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 One Thousand Five Hundred Forty Dollars (\$1,540) 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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Robert W. Richards, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> 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.

**RESPONDENT**  
**MARGERY E. DUDLEY d/b/a DUDLEY RENTALS**

Date: 28/08/08

By: Margery E. Dudley  
MARGERY E. DUDLEY  
Margery E. Dudley

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

Date: 8/14/08

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

Date: 8/12/09

By: Robert W. Richards  
Robert W. Richards, Assistant Regional Counsel  
Office of Regional Counsel

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

Date: Aug. 23, 2008 

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

**ATTACHMENT A**

**SEP Work Plan**

Mike Rayce Contracting  
15707 S. 234th  
Creston, NE 68028

657-9116

WORK PERFORMED AT:

Merbe Dudley

Day Care  
3543 W. 45th Ave

*John #5000*

DATE: 4-20-08

YOUR WORK ORDER NO.: 3543

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

EXTERIOR

- 1) Get scrape prime paint all wood surfaces on House to include Basement windows and Attic windows. Paint House 2 color choice.
- 2) Paint all wood surface on Front Porch ~~no~~ <sup>no</sup> Strip Floor and Paint oil trimble through front back door.
- 3) Remove 14 DH windows from exterior install 14 DH Replacement windows include window stop.
- 4) Interior = ~~Strip and prime paint~~ Strip the friction contact edges at the Bed room closet, Bathroom door, Bed room closet and Entry door, Kitchen cabinet doors/draws, Gate to kitchen. Prime and paint <sup>no</sup>
- 5) B/R QTR Round at kitchen prime paint get round and baseboard. Same applies to both bedrooms.
- 6) Paint walls leading from kitchen to side door <sup>no</sup> Paint walls leading to basement and steps.
- 7) Paint exterior steps at front entrance

Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of Six teen thousand three hundred eighty Dollars (\$ 16,380)

This is a:  Partial  Full invoice due and payable by \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year

In accordance with our  Agreement  Proposal No. \_\_\_\_\_ Dated \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year

*John #5000* CONTRACTORS INVOICE *MD*

IN THE MATTER OF Margery E. Dudley d/b/a Dudley Rentals, Respondent  
Docket No. TSCA-07-2008-0028

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:

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

Original by Certified Mail Return Receipt to:

Margery E. Dudley  
3817 North 85th Avenue  
Omaha, Nebraska 68134

Dated: 8/26/08



Kathy Robinson  
Hearing Clerk, Region 7